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**ASSET PURCHASE AGREEMENT**

**by and between**

**THE CONSOLIDATED CITY OF INDIANAPOLIS,  
MARION COUNTY, INDIANA,**

**IWC RESOURCES CORPORATION**

**and**

**NISOURCE INC.**

**November 26, 2001**

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## TABLE OF CONTENTS

	Page
ARTICLE 1    DEFINITIONS .....	1
1.1 <u>Certain Definitions</u> .....	1
ARTICLE 2    THE TRANSACTION .....	9
2.1 <u>Sale and Purchase of Assets</u> .....	9
2.2 <u>Excluded Assets</u> .....	9
2.3 <u>Assumption of Certain Liabilities</u> .....	10
2.4 <u>Consent of Third Parties</u> .....	12
2.5 <u>Closing</u> .....	12
2.6 <u>Purchase Price</u> .....	12
2.7 <u>Deliveries and Proceedings at Closing</u> .....	13
2.8 <u>Allocation of Consideration</u> .....	14
ARTICLE 3    REPRESENTATIONS AND WARRANTIES OF SELLER .....	14
3.1 <u>Qualification, No Interest in Other Entities</u> .....	15
3.2 <u>Authorization and Enforceability</u> .....	15
3.3 <u>No Violation of Laws or Agreements</u> .....	15
3.4 <u>Financial Statements</u> .....	16
3.5 <u>No Changes</u> .....	16
3.6 <u>Contracts</u> .....	17
3.7 <u>Permits and Compliance With Laws Generally</u> .....	18
3.8 <u>Environmental Matters</u> .....	18
3.9 <u>Consents</u> .....	21
3.10 <u>Title</u> .....	21
3.11 <u>Real Estate</u> .....	21
3.12 <u>Taxes</u> .....	22
3.13 <u>Patents and Intellectual Property Rights</u> .....	22
3.14 <u>Accounts Receivable</u> .....	22
3.15 <u>Labor Relations</u> .....	22
3.16 <u>Employee Benefit Plans</u> .....	23
3.17 <u>Absence of Undisclosed Liabilities</u> .....	25
3.18 <u>No Pending Litigation or Proceedings</u> .....	25
3.19 <u>Supply of Utilities</u> .....	25
3.20 <u>Insurance</u> .....	25
3.21 <u>Relationship with Customers</u> .....	26
3.22 <u>WARN Act</u> .....	26
3.23 <u>Condition of Assets</u> .....	26
3.24 <u>Brokerage</u> .....	26
3.25 <u>All Assets</u> .....	26
ARTICLE 4    REPRESENTATIONS AND WARRANTIES OF BUYER .....	27
4.1 <u>Organization</u> .....	27
4.2 <u>Authorization and Enforceability</u> .....	27
4.3 <u>No Violation of Laws or Agreements</u> .....	27
4.4 <u>Consents</u> .....	28
4.5 <u>Brokerage</u> .....	28

ARTICLE 5	ADDITIONAL COVENANTS.....	28
5.1	<u>Conduct of Business</u> .....	28
5.2	<u>Negotiations</u> .....	29
5.3	<u>Disclosure Schedules</u> .....	30
5.4	<u>Mutual Covenants</u> .....	30
5.5	<u>Filings and Authorizations</u> .....	32
5.6	<u>Public Announcement</u> .....	32
5.7	<u>Further Assurances</u> .....	33
5.8	<u>Cooperation</u> .....	33
5.9	<u>Employees; Employee Benefits</u> .....	34
5.10	<u>Taxes</u> .....	36
5.11	<u>Surveys</u> .....	36
5.12	<u>Guarantees</u> .....	37
5.13	<u>Assumption of Seller Debt</u> .....	37
5.14	<u>Schedule of Permits</u> .....	37
5.15	<u>Title Information</u> .....	38
5.16	<u>Transaction with Related Parties</u> .....	38
5.17	<u>Approval by Parent</u> .....	38
5.18	<u>Supplemental Information</u> .....	38
5.19	<u>Insurance</u> .....	39
5.20	<u>Financial Statements</u> .....	39
5.21	<u>Tax Exempt Bonds</u> .....	40
ARTICLE 6	CONDITIONS PRECEDENT, TERMINATIONS .....	40
6.1	<u>Conditions Precedent to Obligations of Buyer</u> .....	40
6.2	<u>Conditions Precedent to Obligations of Seller Parties</u> .....	42
6.3	<u>Condition Precedent to Obligation of Both Parties</u> .....	43
6.4	<u>Termination</u> .....	43
6.5	<u>Arbitration</u> .....	43
ARTICLE 7	CERTAIN ADDITIONAL COVENANTS .....	44
7.1	<u>Certain Taxes and Expenses</u> .....	44
7.2	<u>Maintenance of Books and Records</u> .....	45
7.3	<u>Survival</u> .....	45
7.4	<u>Indemnification</u> .....	46
7.5	<u>UCC Matters</u> .....	49
7.6	<u>Collection of Receivables</u> .....	49
7.7	<u>Payments in Lieu of Property Taxes</u> .....	49
7.8	<u>Transition Services</u> .....	48
ARTICLE 8	MISCELLANEOUS .....	50
8.1	<u>Construction</u> .....	50
8.2	<u>Notices</u> .....	50
8.3	<u>Successors and Assigns</u> .....	51
8.4	<u>Exhibits and Schedules</u> .....	51
8.5	<u>Governing Law</u> .....	52
8.6	<u>Consent to Jurisdiction</u> .....	52
8.7	<u>Severability</u> .....	52
8.8	<u>No Third Party Beneficiaries</u> .....	52

8.9	<u>Entire Agreement</u> .....	52
8.10	<u>Amendment and Waiver</u> .....	52
8.11	<u>Counterparts</u> .....	53
8.12	<u>Headings</u> .....	53
8.13	<u>Definitions</u> .....	53
8.14	<u>Construction of Certain Provisions</u> .....	53
8.15	<u>Bulk Sales</u> .....	53

## **LIST OF SCHEDULES**

Schedule 1.1(a)	Real Estate
Schedule 1.1(c)	Water Resources
Schedule 1.1(h)	Permits
Schedule 2.3(a)(iv)	Pre-Closing On-Site Conditions
Schedule 2.3(a)(vi)	Pre-Closing Product Liabilities
Schedule 2.3(c)	Retained Liabilities
Schedule 3.1(c)	Equity Interests
Schedule 3.3	Violation of Laws or Agreements (Seller)
Schedule 3.4	Financial Statements
Schedule 3.5	Material Changes
Schedule 3.5(f)	Capital Expenditure Plan
Schedule 3.6	Contracts
Schedule 3.7(a)	Permits and Compliance with Laws Generally
Schedule 3.7(b)	Outstanding Actions
Schedule 3.8	Environmental Matters - Generally
Schedule 3.8(d)	Underground Storage Tanks
Schedule 3.8(e)	Pending or Threatened Environmental Claims
Schedule 3.8(f)	PCBs or Asbestos-Containing Materials
Schedule 3.8(k)	Non-Compliance with Federal and State Primary Drinking Water Standards
Schedule 3.8(k)(iii)	Completion of Water Standards Remediation
Schedule 3.9	Seller and Parent Consents
Schedule 3.10	Permitted Exceptions
Schedule 3.11(a)	Real Estate Proceedings
Schedule 3.11(b)	Leases
Schedule 3.11(c)	Real Estate Rights
Schedule 3.12	Taxes
Schedule 3.13	Intellectual Property
Schedule 3.15(a)	Labor
Schedule 3.15(b)	Collective Bargaining Agreement
Schedule 3.16(a)	Employee Benefit Plans
Schedule 3.16(d)	Employee Benefit Plans - Compliance
Schedule 3.16(g)(i)	Multiemployer Plans
Schedule 3.16(g)(ii)	Defined Benefit Plans
Schedule 3.16(g)(iii)	Post-retirement Welfare Benefits
Schedule 3.16(i)	Employee Benefit Plans - Extraordinary Benefits
Schedule 3.17	Liabilities
Schedule 3.18	Pending Litigation or Proceedings
Schedule 3.19	Supply of Utilities
Schedule 3.20	Insurance
Schedule 3.21	Wholesale Customers
Schedule 3.22	WARN Act
Schedule 3.23	Condition of Assets
Schedule 3.25	Other Excluded Assets
Schedule 4.3	Violation of Laws or Agreements (Buyer)

Schedule 4.4	Buyer and Parent Consents
Schedule 5.1	Conduct of Business
Schedule 5.1(d)(iii)	Monthly Plan
Schedule 5.9(a)	Employees
Schedule 5.9(h)	Former Employees
Schedule 5.12	Parent Guarantees
Schedule 5.14	Schedule of Permits
Schedule 6.3	Required IURC and Other Consents

## **LIST OF EXHIBITS**

Exhibit A	-	Assumption Agreement
Exhibit B	-	Bill of Sale and Assignment
Exhibit C	-	Deeds
Exhibit D	-	Preliminary Purchase Price Allocation
Exhibit E	-	Debt Schedule
Exhibit F	-	Exhibit of Cash Flows
Exhibit G	-	Joint Petition

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made as of November 26, 2001, by and between IWC Resources Corporation, an Indiana corporation (the "Seller"), NiSource Inc., a Delaware corporation ("Parent"), and the Consolidated City of Indianapolis, Marion County, Indiana, an Indiana municipal corporation (the "Buyer").

### Background

A. Parent is a holding company, which owns all the outstanding common stock, no par value, of Seller. Seller is a holding company which owns all of the outstanding common stock, no par value, of certain public utilities engaged, among other things, in the business of storing, supplying, distributing and selling water to the public in certain areas in central Indiana and in providing ancillary services to the utilities, certain of which business is regulated by the Indiana Utility Regulatory Commission, including, but not limited to, the following subsidiaries: Indianapolis Water Company ("IWC"), Harbour Water Corporation, The Darlington Water Works Company, Irishman's Run Acquisition Corp., Liberty Water Corporation and IWC Morgan Water Corporation (the "Business"). Seller, the Subsidiaries and Parent are sometimes hereinafter referred to as the "Seller Parties."

B. Buyer desires to purchase substantially all of the assets, properties and rights of the Business, and Seller desires to sell, and to cause the sale of, such assets, properties and rights on the terms and subject to the conditions set forth in this Agreement.

C. Buyer has asserted rights under certain statutes to have certain of Seller's assets valued for the purpose of repurchasing and acquiring such assets (the "IURC Proceeding"). The Closing of the transactions contemplated by this Agreement will be in lieu of such IURC Proceeding.

### Terms

**NOW, THEREFORE**, in consideration of the mutual representations, warranties, covenants and agreements contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

## ARTICLE 1

### DEFINITIONS{tc \12 "ARTICLE 1      DEFINITIONS}

Certain Definitions. {tc \12 "1.1      Certain Definitions} As used in this Agreement, the following terms shall have the respective meanings ascribed to them in this Section:

1.1 "Acquired Assets" means, subject to Section 2.2, all of Seller's and the Subsidiaries' right, title, and interest in, under and to all of the assets, properties and rights used in the Business as a going concern of every kind, nature and description existing on the Closing

Date, wherever such assets, properties and rights are located and whether such assets, properties and rights are real, personal or mixed, tangible or intangible, and whether or not any of such assets, properties and rights have any value for accounting purposes or are carried or reflected on or specifically referred to in Seller's books or financial statements, including all of the assets, properties and rights relating to the Business enumerated below:

(a) all real property used in the Business, including the real property described in Schedule 1.1(a) but excluding the Southern Avenue property described in Section 2.2(c), together with all fixtures, fittings, buildings, structures and other improvements erected thereon, and easements, rights of way, water lines and rights of use (including those identified on the Easement List dated July 11, 2001 and provided to Buyer) and all licenses, hereditaments, tenements, privileges and other appurtenances thereto or otherwise related to the Business, including the wells and water rights associated with Wellingshire Joint Venture (such as appurtenant rights in and to public streets) (the "Real Estate");

(b) to the extent not included in clause (a) above, all water tanks, reservoirs, water works, plant and systems, purification and filtration systems, pumping stations, pumps, wells, mains, water pipes, hydrants, equipment, machinery, vehicles, tools, dies, spare parts, materials, water supplies, fixtures and improvements, construction in progress, jigs, molds, patterns, gauges and production fixtures and all other tangible personal property, in transit or otherwise, used in the Business;

(c) to the extent not included in clause (a) or (b) above, all water resources used in or intended to be used in the Business, including the water resources described in Schedule 1.1(c), including all raw water, wells, reservoirs, aqueducts, aquifers, ground water, surface water and other water sources and any contracts, rights, agreements, or arrangements to acquire any water resources;

(d) all accounts receivable from customers, accrued utility revenues, materials and supplies and prepayments attributable in each case to the Business;

(e) all unamortized debt expense related to the Assumed Indebtedness, deferred treatment plant costs and carrying costs, deferred water utility billings and other deferred charges (excluding deferred income taxes collectible) attributable to the Business;

(f) Intellectual Property (excluding the Oracle and Peoplesoft licenses referred to on Schedule 3.13) and goodwill relating to the Business and all rights and interests therein granted and obtained with respect thereto;

(g) subject to Section 2.4 hereof, (i) contracts, commitments, leases, agreements, licenses (except as otherwise described in Section 1.1(h), below) and instruments relating to the sale of any assets, services, properties, materials or products, including all customer contracts, operating contracts and distribution contracts relating to the conduct of the Business; (ii) orders, contracts, supply agreements and other agreements relating to the purchase of any assets, services, properties, materials, or products for the Business; (iii) all leases of Real Estate related to the Business; and (iv) all other contracts, commitments, leases, agreements,



licenses and instruments related to the Business (provided that any contracts, agreements and other instruments referred to in clauses (i)-(iv) entered into between the date hereof and the Closing Date are entered into in the ordinary course of business consistent with past practice and in compliance with Section 5.1), including all such contracts, agreements and instruments more specifically listed or described in Schedule 3.6 (the "Contracts");

(h) subject to Section 2.4 hereof, franchises, approvals, permits, authorizations, licenses, orders, registrations, certificates, variances, and other similar permits or rights obtained from any Authority relating to the conduct of the Business and all pending applications therefor, including those listed on Schedule 1.1(h) (the "Permits");

(i) books, records, ledgers, files, documents (including originally executed copies of written Contracts, to the extent available, and copies to the extent not available), correspondence, Tax returns, memoranda, forms, lists, plats, architectural plans, drawings, and specifications, new product development materials, creative materials, advertising and promotional materials, studies, reports, sales and purchase correspondence, books of account and records relating to the Transferred Employees (to the extent transfer of such information is not prohibited by law), photographs, records of plant operations and materials used, quality control records and procedures, equipment maintenance records, manuals and warranty information, research and development files, data and laboratory books, inspection processes, in each case, whether in hard copy or magnetic format, in each instance, to the extent relating to the Business, the Acquired Assets or the Transferred Employees;

(j) all rights or choses in action arising out of occurrences before, on or after the Closing Date and related to the Business or any of the Acquired Assets, including third party warranties and guarantees and all related claims, credits, rights of recovery and set-off and other similar contractual rights, as to third parties held by or in favor of Seller or any Subsidiary;

(k) all rights to insurance and condemnation proceeds (i) to the extent relating to the damage, destruction, taking or other impairment of the Acquired Assets which damage, destruction, taking or other impairment occurs on or prior to the Closing but only to the extent that the proceeds exceed the amount of the write-down of the net book value of such Acquired Assets on the books and records of Seller as a result of such damage, destruction, taking or other impairment, and (ii) to the extent they relate to amounts paid by Buyer for Damages, to the extent Buyer does not receive payment pursuant to Section 7.4(a); and

(l) the assets of Assumed Benefit Plans.

1.2 "Affiliate" of any Person means any Person, directly or indirectly Controlling, Controlled by or under common Control with such Person.

1.3 "Agreement" has the meaning set forth in the introduction hereof.

1.4 "Assumed Benefit Plan" has the meaning set forth in Section 5.9(c) hereof.

1.5 "Assumed Indebtedness" means the liabilities and obligations from and after the Closing Date (except as set forth below) with respect to (i) the First Mortgage Bonds, 8.19% Series due 2022 between IWC and Fidelity Bank, National Association; (ii) the 5.85% Economic Development Water Facilities Revenue Bonds, Series 1995 due September 1, 2025 between the Buyer and IWC; (iii) the 6.10% Economic Development Water Facilities Revenue Bonds Series 1992, due 2022 between Buyer and IWC; (iv) the 5.05% Economic Development Water Facilities Refunding Revenue Bonds, Series 1998 due July 15, 2028 between Buyer and IWC; (v) the 5.05% Economic Development Water Facilities Refunding Revenue Bonds, Series 1998 due July 15, 2028 between the Town of Fishers, Indiana and IWC; (vi) the First Mortgage Bonds, 9.83% Series due 2019 between IWC and Fidelity Bank, National Association; (vii) Credit Agreement between Bank One and IWC; (viii) two (2) Commercial Time Notes between Seller and National City Bank of Indiana each dated November 2, 1999; (ix) Term Loan Agreement between KeyBank National Association and Seller dated August 7, 1996; (x) Revolving Credit Facility between IWC and KeyBank National Association dated June 1, 1998; (xi) Revolving Credit Facility between IWC and KeyBank National Association dated October 29, 2001; (xii) the Installment Promissory Note dated September 5, 2000 from IWC to Dale Davee and Ruby Davee; (xiii) the Installment Promissory Note dated September 5, 2000 from IWC to Randy & William Davee Enterprises, Inc.; (xiv) the Installment Promissory Note dated September 5, 2000 from IWC to William Davee and Thelma Davee; and (xv) the obligation to pay \$140,000 in four equal annual installments beginning September 5, 2001 pursuant to the Agreement to Purchase Water Rights, Easements and other Restrictions and Servitudes dated June 6, 2000 between Mary Jean Keller Petersen and IWC. For purposes of clarity, except as set forth in the next sentence below, "Assumed Indebtedness" shall not include any liability or obligation to the extent accrued prior to the Closing Date or to the extent arising out of or relating to an event, circumstance or occurrence prior to the Closing Date. "Assumed Indebtedness" shall include the outstanding principal amount and the accrued but unpaid interest owed by Seller on the debt obligations set forth in the first sentence of this definition.

1.6 "Assumed Liabilities" has the meaning set forth in Section 2.3(b) hereof.

1.7 "Assumed Plan Liabilities" has the meaning set forth in Section 5.9(c) hereof.

1.8 "Assumption Agreement" has the meaning set forth in Section 2.3(b) hereof.

1.9 "Authority" means any federal, state, local or foreign governmental or regulatory entity (or any department, agency, authority or political subdivision thereof).

1.10 "Benefit Plans" has the meaning set forth in Section 3.16(a) hereof.

1.11 "Business" has the meaning set forth in the Background section hereof.

1.12 "Business Day" means any day other than a Saturday, Sunday, or a day on which banking institutions in the City of Indianapolis are authorized or obligated by law or executive order to close.

1.13 "Business Financial Statements" has the meaning set forth in Section 5.23 hereof.

- 1.14 "Buyer" has the meaning set forth in the introduction hereof.
- 1.15 "Cash Purchase Price" has the meaning set forth in Section 2.6(a) hereof.
- 1.16 "Ceiling" has the meaning set forth in Section 7.4(b)(v) hereof.
- 1.17 "CERCLA" has the meaning set forth in Section 3.8(b) hereof.
- 1.18 "CERCLIS" has the meaning set forth in Section 3.8(g) hereof.
- 1.19 "Closing" has the meaning set forth in Section 2.5 hereof.
- 1.20 "Closing Date" has the meaning set forth in Section 2.5 hereof.
- 1.21 "Code" means the Internal Revenue Code of 1986, as amended and as in existence on the Closing Date.
- 1.22 "Collective Bargaining Agreements" means the agreements identified as such on Schedule 3.15(b) hereto.
- 1.23 "Competing Transaction" has the meaning set forth in Section 5.2.
- 1.24 "Confidentiality Agreement" has the meaning set forth in Section 5.8.
- 1.25 "Contracts" has the meaning set forth in Section 1.1(g) hereof.
- 1.26 "Control" with respect to any Person means the ownership, directly or indirectly, of at least a majority of the voting power of each class of capital stock of such Person entitled to vote in the election of directors of such Person generally.
- 1.27 "Damages" has the meaning set forth in Section 7.4(a)(iii) hereof.
- 1.28 "Disclosure Schedules" means the Schedules referenced in Articles 3, 4 and 5 of this Agreement, as amended or supplemented pursuant to Section 5.3.
- 1.29 "Employee" has the meaning set forth in Section 5.9(a) hereof.
- 1.30 "Environmental Laws" has the meaning set forth in Section 3.8 hereof.
- 1.31 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
- 1.32 "ERISA Affiliate" means (a) any corporation included with any of the Seller Parties in a controlled group of corporations within the meaning of Section 414(b) of the Code; (b) any trade or business (whether or not incorporated) which is under common control with any

of the Seller Parties within the meaning of Section 414(a) of the Code; (c) any member of an affiliated service group of which any of the Seller Parties is a member within the meaning of Section 414(m) of the Code; or (d) any other person or entity treated as an affiliate of any of the Seller Parties under Section 414(o) of the Code.

1.33 "Excluded Assets" has the meaning set forth in Section 2.2 hereof.

1.34 "Financial Statements" means the Historical Financial Statements and the Business Financial Statements.

1.35 "FIRPTA Affidavit" has the meaning set forth in Section 2.7(a) hereof.

1.36 "Former Employees" means all salaried and hourly employees once employed by Seller or any of its Subsidiaries in connection with the Business, but who are no longer so employed on the Closing Date.

1.37 "GAAP" has the meaning set forth in Section 3.4 hereof.

1.38 "Hazardous Substance" has the meaning set forth in Section 3.8 hereof.

1.39 "Historical Financial Statements" has the meaning set forth in Section 3.4 hereof.

1.40 "IDEM" means the Indiana Department of Environmental Management.

1.41 "Indemnified Party" has the meaning set forth in Section 7.4(b)(i) hereof.

1.42 "Indemnifying Party" has the meaning set forth in Section 7.4(b)(i) hereof.

1.43 "Intellectual Property" means the trademarks, patents, trade names and copyrights and applications therefor, inventions, trade secrets, and confidential business information (including know-how, formulas, water filtration, purification and pumping processes and techniques, technical data, designs, drawings, customer and supplier lists, and business and marketing plans and proposals), all computer software (including data and related documentation and object and source codes), whether in magnetic format or hard copy, and tangible embodiments thereof (in whatever form or medium) and all licenses and sublicenses of Seller and the Subsidiaries, in each case, utilized in the Business.

1.44 "Interim Balance Sheet" means the unaudited consolidated balance sheet of Seller at September 30, 2001.

1.45 "IRS" means the Internal Revenue Service.

1.46 "IURC" has the meaning set forth in Section 5.5 hereof.

1.47 "IURC Proceeding" has the meaning set forth in the Background section hereof.

1.48 "IWC" has the meaning set forth in the Background section hereof.

1.49 "Lien" means any lien, charge, claim, pledge, security interest, conditional sale agreement or other title retention agreement, lease, mortgage, security agreement, right of first refusal, option, restriction, tenancy, license, right of way, easement or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or statute or law of any jurisdiction).

1.50 "Material Adverse Effect" means a change or effect (or series of related changes or effects) which has or is reasonably likely to have a material adverse change in or effect upon the business, assets, condition (financial or otherwise) or results of operations of the Business, taken as a whole.

1.51 "Mortgage Indenture" has the meaning set forth in Section 6.1(b) hereof.

1.52 "OSHA" has the meaning set forth in Section 3.7(a) hereof.

1.53 "Parent" has the meaning set forth in the introduction hereof.

1.54 "PCBs" has the meaning set forth in Section 3.8(f) hereof.

1.55 "Permits" has the meaning set forth in Section 1.1(h) hereof.

1.56 "Permitted Exceptions" has the meaning set forth in Section 3.10 hereof; provided, however, that from and after the Closing, Permitted Exceptions shall not include any Lien arising under or resulting from the Mortgage Indenture (unless Buyer assumes the related Assumed Indebtedness).

1.57 "Person" means an individual, a corporation, a partnership, a limited liability company, an association, an Authority, a trust or other entity or organization.

1.58 "Pre-Closing On-Site Conditions" has the meaning set forth in Section 2.3(a)(v).

1.59 "Pre-Closing Product Liabilities" has the meaning set forth in Section 2.3(a)(vii).

1.60 "Preferred Stock Redemption Amount" has the meaning set forth in Section 2.6(c).

1.61 "Prime Rate" means the rate per annum announced from time to time during the reference period by KeyBank National Association as its United States prime, reference or base rate for commercial loans.

1.62 "Purchase Price" has the meaning set forth in Section 2.6(a) hereof.

1.63 "Real Estate" has the meaning set forth in Section 1.1(a) hereof.

1.64 "Recovery" has the meaning set forth in Section 7.4(b)(xii) hereof.

- 1.65 "Regulated Entity" means a Subsidiary that is regulated by the IURC.
- 1.66 "Release" or "Released" has the meaning set forth in Section 3.8 hereof.
- 1.67 "Remedial Action" has the meaning set forth in Section 3.8 hereof.
- 1.68 "Retained Liabilities" has the meaning set forth in Section 2.3(c) hereof.
- 1.69 "Seller" has the meaning set forth in the introduction hereof.
- 1.70 "Seller Parties" has the meaning set forth in the Background section hereof.
- 1.71 "Subsidiaries" shall mean IWC, Harbour Water Corporation, The Darlington Water Works Company, Irishman's Run Acquisition Corp., Liberty Water Corporation and IWC Morgan Water Corporation..
- 1.72 "Survey" has the meaning set forth in Section 5.14(a) hereof.
- 1.73 "Taxes" means any federal, state, local and foreign income, payroll, withholding, excise, sales, use, personal property, use and occupancy, business and occupation, mercantile, real estate, gross receipts, license, employment, severance, stamp, premium, windfall profits, social security (or similar unemployment), disability, transfer, registration, value added, alternative, or add-on minimum, estimated, or capital stock and franchise and other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.
- 1.74 "Threshold Amount" has the meaning set forth in Section 7.4(b)(v) hereof.
- 1.75 "Third Party Claim" has the meaning set forth in Section 7.4(b)(i) hereof.
- 1.76 "Title Commitment" has the meaning set forth in Section 5.18.
- 1.77 "Title Company" has the meaning set forth in Section 5.18.
- 1.78 "Title Policies" has the meaning set forth in Section 5.18.
- 1.79 "Transaction Documents" has the meaning set forth in Section 3.2 hereof.
- 1.80 "Transferred Employees" has the meaning set forth in Section 5.9(b) hereof.
- 1.81 "Union Employees" has the meaning set forth in Section 5.9(a) hereof.
- 1.82 "Unassumed Plans" has the meaning set forth in Section 5.9(d) hereof.
- 1.83 "Utility Code" has the meaning set forth in Section 5.5 hereof.

1.84 "WARN Act" means the Worker Adjustment and Retraining Notification Act, as codified at 29 U.S.C. section 2102 - 2109, as amended.

## ARTICLE 2

### THE TRANSACTION{tc \l2 "ARTICLE 2 THE TRANSACTION}

2.1 Sale and Purchase of Assets. {tc \l2 "2.1 Sale and Purchase of Assets}  
Subject to the terms and conditions of this Agreement, at the Closing referred to in Section 2.5 below, Seller shall, and shall cause the Subsidiaries to, sell, assign, transfer, deliver and convey to Buyer and Buyer shall purchase the Acquired Assets for the Purchase Price specified in Section 2.6.

2.2 Excluded Assets. {tc \l2 "2.2 Excluded Assets} The following assets of Seller and the Subsidiaries shall be excluded from the Acquired Assets (the "Excluded Assets"):

(a) the assets of Wellingshire Joint Venture, provided, however, that the wells and water rights associated with the Wellingshire Joint Venture shall be included in the Acquired Assets;

(b) the assets of Lawrence Water Company;

(c) the real property located on Southern Avenue and the assets of the White River Environmental Partnership ("WREP");

(d) Seller's equity interests in the Subsidiaries;

(e) Seller's equity interest in Lawrence Water Company and WREP and Seller's interest in Wellingshire Joint Venture;

(f) the stock record and minute books of Seller and the Subsidiaries;

(g) except to the extent set forth in Section 7.1, rights to refunds of federal, state, local or foreign income Taxes payable with respect to the business, assets, properties or operations of any of the Seller Parties or any member of any affiliated group of which any of them is a member;

(h) security and other deposits held in Seller's accounts;

(i) accounts owing by and among Seller and its Affiliates;

(j) all current and deferred income tax assets, receipts or collectibles; and

(k) duplicate copies of all books and records transferred to Buyer.

2.3      Assumption of Certain Liabilities. {tc \l2 "2.3      Assumption of Certain Liabilities}

(a)      Subject to Section 2.3(c), Buyer shall assume the following liabilities and obligations of Seller and the Subsidiaries in connection with the Business, to the extent permitted by law:

(i)      the obligations and liabilities to be assumed by Buyer pursuant to Section 5.9 hereof;

(ii)      all liabilities and obligations of Seller or any of the Subsidiaries in respect of the Contracts and Permits assigned or transferred to Buyer pursuant to this Agreement in accordance with the respective terms thereof;

(iii)      the obligation to discharge, defease, refund or otherwise repay the Assumed Indebtedness;

(iv)      any on-site condition that could lead to damages or any liability, obligation or responsibility of Seller or any of the Subsidiaries, contingent or actual, whether based on statutory or common law, now or hereafter in effect, relating to or arising from pollution, contamination or protection of the environment, human health or safety or natural resources for conditions at the Real Estate, or relating to or arising from the presence or Release or threat of Release of Hazardous Substances into the environment at the Real Estate or into or from any building, structure, pipeline or other facility at the Real Estate, including liabilities under CERCLA or any similar federal or state law or regulation, at any time at or prior to the Closing Date (collectively, the "Pre-Closing On-Site Conditions"), including the liabilities and conditions disclosed in the Financial Statements or on Schedule 2.3(a)(iv) hereto;

(v)      obligations existing on the Closing Date to make advances for construction of facilities relating to the Business;

(vi)      any product liability, toxic tort or other claim for injury to person or property, regardless of when made or asserted, to the extent that it arises out of or is based upon any express or implied representation, warranty, agreement or guarantee made by Seller or any of the Subsidiaries, or alleged to have been made by any of such Persons, or to the extent that it is imposed or asserted to be imposed by operation of law, in connection with any service performed or product distributed or sold by or on behalf of Seller or any of the Subsidiaries prior to Closing, or to the extent it arises out of or is based upon any act or omission of any of Seller or any of the Subsidiaries or any of their respective employees, agents or independent contractors prior to Closing, including any claim relating to water quality standards, any claim relating to any product delivered in connection with the performance of services provided by Seller or any of the Subsidiaries and any claim seeking recovery for consequential damages, lost revenue or income (collectively, the "Pre-Closing Product Liabilities"), including the liabilities and claims disclosed in the Financial Statements or on Schedule 2.3(a)(vi); and



(vii) other liabilities and obligations arising out of or relating to the ownership or operation of the Acquired Assets or the Business on or prior to the Closing Date.

(b) Any liabilities or obligations that are assumed by Buyer pursuant to Section 2.3(a) above are hereinafter referred to as the "Assumed Liabilities." At the Closing, Buyer shall execute and deliver to Seller an assumption agreement, in substantially the form of the assumption agreement attached hereto as Exhibit A (the "Assumption Agreement"), pursuant to which Buyer shall assume the Assumed Liabilities. Upon execution and delivery of the Assumption Agreement, Buyer shall irrevocably and unconditionally waive and release the Seller Parties from all Assumed Liabilities and all liabilities or obligations relating to the Business to the extent arising from events or occurrences after the Closing, including any liabilities created or which arise by statute or common law, including CERCLA (it being understood that this shall not constitute a waiver and release of any claims arising out of the contractual relationships between Buyer and Seller).

(c) Buyer shall not assume any liabilities, commitments or obligations (contingent or absolute and whether or not determinable as of the Closing) of any of the Seller Parties or any of their Affiliates except for the Assumed Liabilities as expressly provided for above, whether such liabilities or obligations relate to payment, performance or otherwise, and all liabilities, commitments or obligations not expressly transferred to Buyer hereunder as Assumed Liabilities are being retained by the Seller Parties (the "Retained Liabilities"). Each of the Seller Parties hereby irrevocably and unconditionally waives and releases Buyer from all Retained Liabilities including any liabilities created or which arise by statute or common law, including CERCLA (it being understood that this shall not constitute a waiver and release of any claims arising out of the contractual relationships between Buyer and Seller).

Without limiting the foregoing, all of the following shall be considered Retained Liabilities and not Assumed Liabilities (except as specified below) for the purposes of this Agreement:

(i) any federal, state, foreign or local income Tax payable with respect to the business, assets, properties or operations of any of the Seller Parties or any member of any affiliated group of which any of them is a member;

(ii) liabilities for deferred income taxes;

(iii) contingent or actual liabilities (1) existing as of September 30, 2001 which are of a nature required under GAAP to be disclosed on the Interim Balance Sheet but are not so disclosed or (2) incurred after September 30, 2001 outside the ordinary course of business, including the liabilities set forth on Schedule 2.3(c);

(iv) the obligations and liabilities to be retained by any of the Seller Parties pursuant to Section 5.9 hereof;

(v) except as provided in Section 5.9, any liability or obligation with respect to compensation, bonuses, severance pay, non-competition, termination or other benefits to any employees under non-competition and employment agreements and other compensation plans;

(vi) any obligation or liability arising under any contract, commitment, instrument or agreement that is not assigned or transferred to Buyer pursuant to this Agreement; and

(vii) any liability or obligation in respect of the Excluded Assets (other than the Assumed Indebtedness).

2.4 Consent of Third Parties. {tc \l2 "2.4 Consent of Third Parties} On the Closing Date, Seller shall assign and shall cause the Subsidiaries to assign to Buyer, and Buyer shall assume, the Contracts and the Permits which are to be transferred to Buyer as provided in this Agreement by means of the Bill of Sale and the Assumption Agreement. To the extent that the assignment of all or any portion of any Contract or Permit shall require the consent (or result in a breach or violation thereof) of the other party thereto or any other Person, and such consent shall not be obtained prior to Closing, this Agreement shall not constitute an agreement to assign any such Contract or Permit included in the Acquired Assets. To provide Buyer the full realization and value of every Contract of the character described in the immediately preceding sentence, Seller agrees that on and after the Closing, it will, at the request and under the direction of Buyer, in the name of Seller or otherwise as Buyer shall specify, take all reasonable actions (including the appointment of Buyer as attorney-in-fact for Seller to proceed) and do or cause to be done all such things as shall in the reasonable opinion of Buyer be necessary at Seller's sole cost and expense: (a) to assure that the rights of Seller or the Subsidiaries under such Contracts shall be preserved for the benefit of Buyer and (b) to facilitate receipt of the consideration to be received by Seller or the Subsidiaries in and under every such Contract. To the extent that Buyer does receive the benefits of any such Contract pursuant to the preceding sentence, such Contract shall be a Contract "assigned or transferred to Buyer pursuant to this Agreement" within the meaning of Sections 2.3(a)(ii) and 2.3(a)(vi) hereof. Nothing in this Section 2.4 shall in any way diminish the obligations of Seller to obtain consents and approvals under this Agreement.

2.5 Closing. {tc \l2 "2.5 Closing} Subject to the terms and conditions of this Agreement, the closing of the sale and purchase of the Acquired Assets (the "Closing") shall take place at 10:00 a.m., Indianapolis time, on a date mutually satisfactory to Buyer and Seller which is no later than the fifth Business Day after satisfaction (or waiver) of the conditions to Closing set forth in Sections 6.1, 6.2 and 6.3 hereof (other than those conditions which require the delivery of any documents or the taking of other action, at the Closing) at the offices of Sommer & Barnard, PC, 111 Monument Circle, 4000 Bank One Tower, Indianapolis, IN 46204, or on such other date and at such other time or place as may be mutually agreed upon by the parties hereto (the "Closing Date").

2.6 Purchase Price. {tc \l2 "2.6 Purchase Price}

(a) Purchase Price. Subject to the terms and conditions of this Agreement, the aggregate purchase price to be paid by Buyer for the purchase of the Acquired Assets (the "Purchase Price") shall be (i) an amount in cash equal to (1) Three Hundred Eighty Million One

Hundred Thousand Dollars (\$380,100,000) plus (2) the cost of redemption of the preferred stock issued by Seller (the "Preferred Stock Redemption Amount")(the sum of (1) and (2) being the "Cash Purchase Price") and (ii) the assumption or defeasance by Buyer of the Assumed Liabilities.

(b) Payment of the Cash Purchase Price. Subject to the terms and conditions of this Agreement, the Cash Purchase Price shall be paid by Buyer on the Closing Date by federal or other wire transfer of immediately available funds to the account designated by Seller in writing at least two (2) Business Days prior to the Closing Date.

2.7 Deliveries and Proceedings at Closing. {tc \12 "2.7 Deliveries and Proceedings at Closing} Subject to the terms and conditions of this Agreement, at the Closing:

(a) Deliveries to Buyer. Seller shall, and shall cause the Subsidiaries to, deliver to Buyer:

(i) Bill of Sale and Assignment and any other instruments of assignment to the Acquired Assets, duly executed by Seller and the Subsidiaries, substantially in the form of Exhibit B hereto and;

(ii) the consents to transfer of all transferable or assignable Contracts, Intellectual Property and Permits (including environmental permits), to the extent specifically required hereunder;

(iii) title certificates to any motor vehicles included in the Acquired Assets, duly executed by Seller and the Subsidiaries (together with any other transfer forms necessary to transfer title to such vehicles);

(iv) one or more deeds or instruments of conveyance to the Real Estate to Buyer, duly executed and acknowledged by Seller and the Subsidiaries and in recordable form, each substantially in the form of Exhibit C hereto;

(v) the certificates, opinions and other documents required to be delivered by Parent and Seller pursuant to Section 6.1 hereof and certified resolutions evidencing the authority of Seller as set forth in Section 3.2 hereof;

(vi) all agreements and other documents required by this Agreement;

(vii) a receipt for the payment of the Cash Purchase Price duly executed by Seller; and

(viii) all such other instruments of conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer to Buyer the Acquired Assets in accordance with this Agreement, duly executed and acknowledged by Seller and the Subsidiaries, if necessary, and in recordable form.

- (b) Deliveries by Buyer to the Seller Parties. Buyer will deliver to the Seller Parties:
- (i) wire transfer of immediately available funds in an amount equal to the Cash Purchase Price;
  - (ii) the Assumption Agreement, duly executed by Buyer;
  - (iii) the certificates and other documents required to be delivered by Buyer pursuant to Section 6.2 hereof; and
  - (iv) all such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement.

2.8 Allocation of Consideration. {tc \l2 "2.8 Allocation of Consideration} Upon execution of this Agreement, Exhibit D shall contain the "Preliminary Purchase Price Allocation," which shall reflect Seller's and Buyer's best estimate of the manner in which, for tax and financial accounting purposes, the Buyer and Seller shall allocate the consideration paid by Buyer to Seller among the Acquired Assets. The Preliminary Purchase Price Allocation may be subject to revision before Closing. On or before Closing, the parties agree to revise Exhibit D to reflect the "Final Purchase Price Allocation." For tax and financial accounting purposes, Buyer and Seller shall allocate the consideration paid by Buyer to Seller among the Acquired Assets in a manner set forth in the "Final Purchase Price Allocation" set forth on Exhibit D as of the Closing Date. Buyer and the Seller Parties shall each report the federal, state and local income and other tax consequences of the transactions contemplated by this Agreement (which for purposes of this Agreement includes the Transaction Documents) in a manner consistent with such Final Purchase Price Allocation if determined in accordance with the preceding sentence including the preparation and filing of Form 8594 under Section 1060 of the Code (or any successor form or successor provision of any future tax law, or any comparable provision of state, or local tax law) with their respective federal, state and local income tax returns for the taxable year that includes the Closing Date.

### **ARTICLE 3**

#### **REPRESENTATIONS AND WARRANTIES OF SELLER**{tc \l2 "ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER}

Each of Seller and Parent jointly and severally represents and warrants to Buyer as follows:

3.1 Qualification; No Interest in Other Entities. {tc \l2 "3.1 Qualification, No Interest in Other Entities}

(a) Parent is a corporation duly organized and validly existing under the laws of the State of Delaware and has all requisite corporate power and corporate authority to own and vote the common stock, no par value, of Seller.

(b) Each of Seller and each Subsidiary is a corporation duly organized and validly existing under the laws of the State of Indiana and has all requisite corporate power and corporate authority to own, lease and operate the Acquired Assets owned or leased by it and the Business conducted by it as presently being conducted. Each of Seller and each Subsidiary is qualified to do business and is in good standing as a foreign corporation in all jurisdictions wherein the nature of the business conducted by it or its ownership or use of assets and properties make such qualification necessary except such failures to be qualified or to be in good standing, if any, which when taken together with all such other failures of Seller and/or the Subsidiaries do not have a Material Adverse Effect.

(c) Except as disclosed on Schedule 3.1(c), no shares of any corporation or any equity ownership or other investment interest, either of record, beneficially or equitably, in any Person are included in the Acquired Assets.

3.2 Authorization and Enforceability. {tc \l2 "3.2 Authorization and Enforceability} Each of Seller, each Subsidiary and Parent has full corporate power and corporate authority to execute, deliver and perform this Agreement and all other agreements and instruments to be executed by them in connection herewith (such other agreements and instruments being hereinafter referred to collectively as the "Transaction Documents"). The execution, delivery and performance by Parent, Seller and each Subsidiary of this Agreement and the Transaction Documents to which Parent, Seller and/or any of the Subsidiaries is a party have been duly authorized by all necessary corporate action on the part of each of them, subject to the approval of each of Seller's and each Subsidiary's respective common shareholders. This Agreement has been duly executed and delivered by Seller and Parent. This Agreement is a legal, valid and binding obligation of Seller and Parent, enforceable against them in accordance with its terms except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditors' rights generally and except to the extent that injunctive or other equitable relief is within the discretion of a court. Upon execution and delivery of each of the Transaction Documents, as of the Closing Date, each of the Transaction Documents to which Parent, Seller and/or any Subsidiary is a party will constitute the legal, valid and binding obligations of Parent, Seller and such Subsidiary, enforceable against them in accordance with its respective terms except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditors' rights generally and except to the extent that injunctive or other equitable relief is within the discretion of a court.

3.3 No Violation of Laws or Agreements. {tc \l2 "3.3 No Violation of Laws or Agreements} The execution, delivery, and performance of this Agreement and the Transaction Documents by Parent, Seller and/or any Subsidiary do not, and the consummation of the

transactions contemplated by this Agreement and the Transaction Documents by Parent, Seller and each Subsidiary, (a) will not contravene any provision of the Articles of Incorporation or Bylaws of Parent, Seller or any such Subsidiary; or (b) except as set forth on Schedule 3.3, will not violate, conflict with, result in a breach of, or constitute a default (or an event which would, with the passage of time or the giving of notice or both, constitute a default) under, or result in or permit the termination, modification, acceleration, or cancellation of, or result in the creation or imposition of any Lien of any nature whatsoever upon any of the Acquired Assets or give to others any interests or rights therein under (i) any indenture, mortgage, loan or credit agreement, license, instrument, lease, contract, plan, permit or other agreement or commitment, oral or written, to which Parent, Seller or any Subsidiary is a party, or by which the Business or any of the Acquired Assets may be bound or affected, except for such violations, conflicts, breaches, terminations, modifications, accelerations, cancellations, Liens, interests or rights which, individually and in the aggregate, do not have a Material Adverse Effect or will be cured, waived or terminated prior to the Closing Date, or (ii) any judgment, injunction, writ, award, decree, restriction, ruling, or order of any court, arbitrator or Authority or any applicable constitution, law, ordinance, rule or regulation, to which Parent, Seller or a Subsidiary is subject other than those violations or conflicts which individually and in the aggregate do not have a Material Adverse Effect.

3.4 Financial Statements. {tc \l2 "3.4 Financial Statements}

(a) Seller has previously delivered to Buyer (i) audited consolidated financial statements of Seller as of and for the year ended December 31, 1999, (ii) audited consolidated financial statements of Seller as of and for the year ended December 31, 2000 and (iii) unaudited consolidated financial statements of Seller as of and for the nine months ended September 30, 2001, including the Interim Balance Sheet (collectively, the "Historical Financial Statements"). The Historical Financial Statements fairly present in all material respects the consolidated financial position and the results of operations of the Business, Lawrence Water Company, WREP and Wellingshire Joint Venture in accordance with generally accepted accounting principles ("GAAP") consistently applied, except as set forth on Schedule 3.4, and subject, in the case of unaudited statements, to the absence of notes and normal year-end audit adjustments.

(b) The financial statements for the Regulated Entities included in the Annual Report to the IURC for the year ended December 31, 2000 were prepared in all material respects in accordance with the rules and regulations of the IURC.

3.5 No Changes. {tc \l2 "3.5 No Changes} Except as disclosed on the Interim Balance Sheet or on Schedule 3.5, since December 31, 2000 to the date hereof, Seller has conducted the Business only in the ordinary course of business consistent with past practice. Since December 31, 2000, except as disclosed in the Historical Financial Statements (including the notes thereto) or on Schedule 3.5, there has not been:

- (a) any Material Adverse Effect;
- (b) any persons designated participants in the IWC Resources Corporation Executive Supplemental Benefits Plan, any change in the salaries or other compensation payable or to

become payable to, or any advance (excluding advances for ordinary business expenses) or loan to, any Transferred Employee, or material change or material addition to, or material modification of, other benefits (including any bonus, profit-sharing, pension or other plan in which any of the Transferred Employees participate) to which any of the Transferred Employees may be entitled, or any payments to any pension, retirement, profit-sharing, bonus or similar plan other than in any such case (i) in the ordinary course consistent with past practice, (ii) as required by law, or (iii) as required by the Collective Bargaining Agreements;

(c) any alteration in any material respect of the customary practices with respect to the collection of accounts receivable of the Business or the provision of discounts, rebates or allowances;

(d) any disposition of or failure to keep in effect any rights in, to or for the use of any Permit of the Business which individually or in the aggregate would have a Material Adverse Effect;

(e) any damage, destruction or loss affecting the Business which individually or in the aggregate would have a Material Adverse Effect, whether or not covered by insurance;

(f) any material change in expenditures for and investments in the Business or the Acquired Assets from the budget and capital expenditure plan for Seller and the Subsidiaries attached as Schedule 3.5(f);

(g) any change by Seller in its method of accounting or keeping its books of account or accounting practices with respect to the Business except as required by GAAP and as set forth on Schedule 3.5; or

(h) any sale, transfer or other disposition of any material assets, properties or rights of the Business, except in the ordinary course of business consistent with past practice.

3.6 Contracts. {tc \l2 "3.6 Contracts} Schedule 3.6 contains a list of all Contracts effective as of the date of this Agreement, (other than Contracts with respect to which the Business' total annual liability or expense is less than \$100,000 individually and \$3,000,000 in the aggregate). Seller has delivered to Buyer a correct and complete copy of each written agreement listed in Schedule 3.6. Except as disclosed on Schedule 3.6, with respect to each Contract, neither Seller nor, to the best of the Seller's or Parent's knowledge, any other party thereto, is in breach or default, and to the best of the Seller's or Parent's knowledge, no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under the Contract, except in each case where such breaches, terminations, modifications, accelerations or defaults, individually or in the aggregate, do not have a Material Adverse Effect. Except as set forth in Schedule 3.6, there are no disputes pending or to the best of the Seller's or Parent's knowledge, threatened, under or in respect of any of the Contracts, other than those that individually and in the aggregate do not have a Material Adverse Effect. Except as set forth on Schedule 3.6, there are no pending offers or options to or from Seller or any Subsidiary for the sale, transfer or other disposition of any asset, property or right of the Business other than offers received in Seller's and the Subsidiaries' ordinary course of storing, supplying, distributing and selling water to the public.

3.7 Permits and Compliance With Laws Generally. {tc \l2 "3.7 Permits and Compliance With Laws Generally}

(a) Except as disclosed on Schedule 3.7(a), Seller and the Subsidiaries possess and are in compliance with all Permits required to operate the Business as presently operated and to own, lease or otherwise hold the Acquired Assets under all applicable laws, rules, regulations, ordinances and codes, other than Environmental Laws (as defined below) which are the subject of Section 3.8 hereof, except to the extent that any failure to possess, or to comply with, any Permit, laws, rules, regulations or orders does not, individually or in the aggregate, have a Material Adverse Effect. Except as disclosed in Schedule 3.7(a), the Business is conducted by Seller and the Subsidiaries in compliance with all applicable laws (including the Occupational Safety and Health Act and the rules and regulations thereunder ("OSHA"), zoning, building and similar laws), rules, regulations, ordinances, codes, judgments and orders, except for such failures to comply which individually or in the aggregate do not have a Material Adverse Effect. All Permits of Seller or any Subsidiary relating to the operation of the Business are in full force and effect, other than those the failure of which to be in full force and effect individually or in the aggregate do not have a Material Adverse Effect. There are no proceedings pending or, to the best of the Seller's or Parent's knowledge, threatened that seek the revocation, cancellation, suspension or any adverse modification of any such Permits presently possessed by Seller or any Subsidiary other than those revocations, cancellations, suspensions or modifications which individually or in the aggregate do not have a Material Adverse Effect.

(b) Except as set forth on Schedule 3.7(b), no outstanding notice, citation, summons or order has been issued, no outstanding complaint has been filed, no outstanding penalty has been assessed and no investigation or review is pending or, to the knowledge of the Seller or Parent, threatened, by any Authority or other Person with respect to any alleged (i) violation by Seller or any Affiliate of Seller relating to the Business of any law, ordinance, rule, regulation, code or order of any Authority; or (ii) failure by Seller or any Affiliate to have any Permit required in connection with the conduct of the Business or otherwise applicable to the Business (including the Acquired Assets), except, in each case, where such violations or failures, individually or in the aggregate, do not have a Material Adverse Effect.

3.8 Environmental Matters. {tc \l2 "3.8 Environmental Matters} Except as disclosed on Schedule 3.8, Seller and the Subsidiaries possess and are in compliance with all Permits required to operate the Business as presently operated and to own, lease or otherwise hold the Acquired Assets under all applicable Environmental Laws, and the Business is conducted by Seller and the Subsidiaries in compliance with all applicable Environmental Laws, except in each case to the extent that any failure to possess, or to comply with, any such Permit or Environmental Laws does not, individually or in the aggregate, have a Material Adverse Effect. All Permits of Seller or any Subsidiary relating to the Environmental Laws are in full force and effect, other than those the failure of which to be in full force and effect individually or in the aggregate do not have a Material Adverse Effect. With such exceptions as are not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect:



(a) Neither Seller nor any Subsidiary has disposed of or arranged for the disposal of or Released any Hazardous Substances, other than in conformity with applicable laws and regulations, at any Real Estate, or, in connection with the Business or Acquired Assets, at any other facility, location, or other site.

(b) Neither Seller nor any Subsidiary has received any written notice or request for information with respect to, and to the best of the Seller's or Parent's knowledge, none of them has been designated a potentially liable or responsible party for remedial or removal actions or response costs, in connection with any Real Estate, or, as of the date hereof, with respect to the Business or Acquired Assets, at any other facility, location, or other site under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or comparable state statutes.

(c) To the best of the Seller's or Parent's knowledge, except for such use or storage of Hazardous Substances as is incidental to the conduct of the Business, which use and storage is or has been in substantial compliance with applicable laws and regulations, and which use and storage has not caused any condition that requires Remedial Action, no Real Estate has been used for the storage, treatment, generation, processing, production or disposal of any Hazardous Substances or as a landfill or other waste disposal site in violation of any law, rule or regulation.

(d) To the best of the Seller's or Parent's knowledge, except as set forth on Schedule 3.8(d), underground storage tanks leaking or intact are not, and have not in the past been, located on or under any Real Estate.

(e) To the best of Seller's or Parent's knowledge, except as set forth on Schedule 3.8(e), there are no pending, unresolved or, threatened claims against Seller, any Subsidiary or the Business for investigatory costs, cleanup, removal, remedial or response costs, natural resource damages or otherwise involving Remedial Action arising out of any Releases or threat of Release of any Hazardous Substances at any Real Estate or, as of the date hereof, with respect to the Business or the Acquired Assets or at any other facility, other location, or other site.

(f) To the best of the Seller's or Parent's knowledge, except as set forth on Schedule 3.8(f), no polychlorinated biphenyls ("PCBs") or asbestos-containing materials are located at or in any Real Estate in violation of Environmental Laws or which require Remedial Action.

(g) To the best of the Seller's or Parent's knowledge, no Hazardous Substance managed or generated by or on behalf of Seller or any Subsidiary at the Real Estate or in connection with the Business or Acquired Assets has come to be located at any site that is listed or formally proposed for listing under CERCLA, the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS"), the National Priority List or any similar state list or that is the subject of federal, state, or local enforcement actions or investigations.

(h) Neither Seller nor Parent knows of any facts or circumstances related to environmental matters (i) in connection with the operation of the Business or (ii) concerning the

Real Estate, that are reasonably likely to result in any material reduction in the quality or quantity of water available for supply to the Seller Parties' customers.

(i) To the best of Seller's or Parent's knowledge, none of the aquifers, reservoirs, well fields or production wells which are utilized to supply any portion of the water for the Business contain or are contaminated with or threatened by any Hazardous Substances at levels in excess of Maximum Contaminant Levels (40 CFR Part 141), Maximum Contaminant Level Goals or the World Health Organization Guidelines for Drinking Water Quality.

(j) Within thirty (30) days of the date hereof, Seller will provide Buyer with copies of all written environmental audits, site assessments or investigations of which Seller or Parent is aware (after due inquiry) prepared for the Real Estate or operations of the Business.

(k) Except as set forth in Schedule 3.8(k):

(i) Seller and the Subsidiaries (including for purposes of Section 3.8(k)(i) and (ii), Affiliates and predecessors of the Seller Parties) are and have been for the past three years in full compliance with all federal and state primary drinking water standards;

(ii) Seller and the Subsidiaries are and have been for the past three years in full compliance with all federal and state secondary drinking water standards; and

(iii) As to all outstanding violations of state or federal drinking water standards, as of the date hereof, Seller and the Subsidiaries have completed or are in the process of completion in accordance with all applicable deadlines, all actions required by Environmental Law or Authorities to correct or otherwise respond to such violations. The estimated dates of completion of such actions are listed on Schedule 3.8(k)(iii).

(l) Neither Seller nor any Subsidiary will be required to place any notice or restriction relating to the presence of Hazardous Substances in the deed to any Real Estate, or in any written instrument accompanying this Agreement, and no Real Estate has such a notice or restriction in its deed or any other written instrument relating to the purchase, lease or rental of such property.

For the purposes of this Agreement, (A) "Remedial Action" means all actions to (x) clean up, remove, treat or in any other way respond to any presence, Release or threat of Release of Hazardous Substances; (y) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Substances so it does not endanger or threaten to endanger public or employee health or welfare or the environment; or (z) perform studies, investigations or monitoring necessary or required to investigate the foregoing; (B) "Environmental Laws" means any common law or federal, state or local law, statutes, rule, regulation, ordinance, code, judgment or order relating to the protection of the environment or human health and safety and includes, but is not limited to, CERCLA (42 U.S.C. section 9601, et seq.), the Clean Water Act (33 U.S.C. section 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. section 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. section 300f et seq.), the Clean Air Act (42 U.S.C. section 7401

et seq.) and the Oil Pollution Act of 1990 (33 U.S.C. section 2701 et seq.), each as has been amended and the regulations promulgated pursuant thereto; (C) "Release" or "Released" means released, spilled, leaked, discharged, disposed of, pumped, poured, emitted, emptied, injected, leached, dumped or allowed to escape; and (D) "Hazardous Substances" means hazardous or toxic or polluting substances or wastes or contaminant, including petroleum products, wastes or derivatives, PCBs and radioactive materials, including substances defined in the Environmental Laws as hazardous substances or wastes.

3.9 Consents. {tc \l2 "3.9 Consents} No consent, approval or authorization of, or registration or filing with, any Person (governmental or private) is required in connection with the execution, delivery and performance by Seller or Parent of this Agreement, the Transaction Documents, or the consummation of the transactions contemplated hereby or thereby by Seller or any Subsidiary, including in connection with the assignment of the Contracts and Permits contemplated hereby, except (i) as specified on Schedule 3.3, Schedule 3.9 or Schedule 6.3 and (ii) for such other consents, approvals, authorizations, registrations or filings the failure of which to obtain or make would not individually or in the aggregate have a Material Adverse Effect.

3.10 Title. {tc \l2 "3.10 Title} Seller or one of the Subsidiaries has good and valid title to all of the Acquired Assets constituting personal property, good and marketable title in fee simple to all of the owned Acquired Assets constituting Real Estate and good and valid leasehold title to all of the leased Acquired Assets constituting Real Estate, in each case, free and clear of Liens subject only to the Permitted Exceptions. "Permitted Exceptions" as used herein shall mean (a) the Liens set forth in Schedule 3.10 hereto, (b) Liens securing Taxes, assessments, governmental charges or levies, or the claims of materialmen, mechanics, carriers and like persons, all of which are not yet due and payable or which are being contested in good faith or (c) such other Liens which, individually or in the aggregate, do not have a Material Adverse Effect (it being understood that to the extent a Permitted Exception relates to or arises from a Retained Liability, Seller shall still be liable for such Retained Liability to the extent set forth herein).

3.11 Real Estate. {tc \l2 "3.11 Real Estate}

(a) As of the date hereof, Seller has not received any written or oral notice for assessments for public improvements against the Real Estate which remains unpaid, and to the best of the Seller's or Parent's knowledge, no such assessment has been proposed. Except as set forth on Schedule 3.11(a), as of the date hereof, there is no pending condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of any of the Real Estate and to the best of Seller's or Parent's knowledge no such proceeding is threatened.

(b) Except as disclosed on Schedule 3.11(b), as of the date hereof, neither Seller nor any of the Subsidiaries is a lessee under any Contract relating to the use or occupancy of the Real Estate involving annual payments in excess of \$25,000.

(c) Except as disclosed on Schedule 3.11(c), neither the Seller nor any Subsidiary has received written, or to the best of Seller's or Parent's knowledge, oral notice from any Person contesting or in any way disputing the Seller's or any Subsidiary's right to use any of the Real Estate.

3.12 Taxes. {tc \12 "3.12 Taxes} The Seller Parties have (a) timely filed all material returns and reports for Taxes, including information returns, that are required to have been filed in connection with, relating to, or arising out of, the Business, (b) paid all Taxes that are shown to have come due pursuant to such returns or reports and (c) paid all other material Taxes not required to be reported on returns in connection with, relating to, or arising out of, or imposed on the property of the Business for which a notice of assessment or demand for payment has been received or which have otherwise become due. All such returns or reports have been prepared in accordance with all applicable laws and requirements in all material respects. Except to the extent disclosed on Schedule 3.12, none of the assets of the Business or constituting any of the Acquired Assets (a) is property that is required to be treated as owned by another Person pursuant to the "safe harbor lease" provisions of former Section 168(f)(8) of the Code, (b) is "tax-exempt use property" within the meaning of Section 168(h) of the Code or (c) directly or indirectly secures any debt the interest on which is tax-exempt under Section 103(a) of the Code.

3.13 Patents and Intellectual Property Rights. {tc \12 "3.13 Patents and Intellectual Property Rights} To the best of Seller's or Parent's knowledge, the operations of Seller or any Subsidiary do not make any unauthorized use of any Intellectual Property except for any such unauthorized uses which, individually and in the aggregate, do not have a Material Adverse Effect. Assuming the consents listed on Schedule 3.3 are obtained, except as set forth on Schedule 3.13, Buyer will not lose any of Seller's rights to, or be required to pay increased royalties for, any Intellectual Property included in the Acquired Assets (including software licenses) as a result of the Closing and the consummation of the transactions contemplated by this Agreement, except for any such rights or such increased royalties the loss or payment of which, individually or in the aggregate, would not have a Material Adverse Effect.

3.14 Accounts Receivable. {tc \12 "3.14 Accounts Receivable} The accounts receivable of Seller arising from the Business as set forth on the Interim Balance Sheet or arising since the date thereof have arisen out of bona fide sales and deliveries of goods, performance of services and other business transactions in the ordinary course of business consistent with past practice. The allowance for collection losses on the Interim Balance Sheet has been determined in accordance with GAAP consistent with past practice.

3.15 Labor Matters. {tc \12 "3.15 Labor Relations} Except as set forth in Schedule 3.15(a), (i) neither Seller nor any Subsidiary has at any time during the three (3) years prior to the date of this Agreement had, and, to the best of Seller's or Parent's knowledge, there is not now threatened, a strike, work stoppage or work slowdown with respect to or affecting the Business which had or could reasonably be expected to have a Material Adverse Effect; (ii) there is no unfair labor practice charge, complaint, charge or claim against Seller or any Subsidiary pending or, to the best of Seller's or Parent's knowledge, threatened against Seller or any Subsidiary before the National Labor Relations Board, the Equal Employment Opportunity Commission, OSHA, the Wage and Hour Division of the Department of Labor, the Office of Federal Contract Compliance Programs or any comparable state or local agency, and (iii) neither Seller nor any Subsidiary is involved in or threatened with any labor dispute, arbitration, lawsuit or administrative proceeding relating to any of the Employees related to the Business which could reasonably be expected to have a Material Adverse Effect. As of the date hereof, except as

set forth in Schedule 3.15(b), no Employee is represented by any union or other labor organization.

3.16 Employee Benefit Plans. {tc \12 "3.16 Employee Benefit Plans}

(a) Schedule 3.16(a) contains a true and complete list of each "employee benefit plan," as defined in Section 3(3) of ERISA (including any "multiemployer plan" as defined in Section 3(37) of ERISA), bonus, incentive, deferred compensation, excess benefit, employment contract, stock purchase, stock ownership, stock option, supplemental unemployment, vacation, sabbatical, sick-day, severance or other material employee benefit plan, program or arrangement (other than those required to be maintained by law), whether written or unwritten, qualified or nonqualified, funded or unfunded, foreign or domestic, (i) maintained by, or contributed to by Seller or any of its Affiliates, in respect of any Employee or Former Employee, or (ii) with respect to which Seller or any of its Affiliates has any liability in respect of any Employee or Former Employee (the "Benefit Plans"). Except as disclosed on Schedule 3.16(a), neither Seller nor any of its Affiliates maintains any bonus, pension or welfare benefit plan, program or arrangement, including any deferred compensation arrangement, for directors, consultants or independent contractors of the Business.

(b) A true and complete copy of each Benefit Plan and related trust agreements and (to the extent applicable) a copy of each Benefit Plan's current summary plan description, and, in the case of an unwritten Benefit Plan, a written description thereof, has been furnished to Buyer. In addition, to the extent applicable, Buyer has been provided a copy of the most recent IRS determination letter issued to each Benefit Plan and a copy of the three (3) most recent IRS Form 5500s together with all schedules and accountants' statement filed, and actuarial reports prepared, on behalf of each Benefit Plan.

(c) Each Benefit Plan which is intended to be qualified under Section 401(a) of the Code (as designated on Schedule 3.16(a)) is so qualified, any trust forming a part of such a Benefit Plan is tax exempt under Section 501(a) of the Code, and each such Benefit Plan has been amended, as and when necessary, to comply with Code.

(d) Except as disclosed in Schedule 3.16(d), each Benefit Plan has been operated and administered in all material respects in accordance with its terms and all applicable laws, including ERISA and the Code. All reports and disclosures required with respect to each Benefit Plan have been properly and timely made so that Seller, Buyer and the Benefit Plans will not be subject to any liability or damages other than routine and undisputed benefit claims.

(e) None of the Acquired Assets transferred pursuant to Section 5.9 is subject to a material Lien or Tax under the Code or ERISA.

(f) Neither Seller nor any ERISA Affiliate and, to the best of Seller's or Parent's knowledge, no other Person, has taken any action or failed to take any action with respect to any Benefit Plan that may subject Buyer or any Assumed Benefit Plan to any material liability or Tax under the Code or ERISA.

(g) Except as separately disclosed in Schedule 3.16(g)(i), neither Seller nor any of its ERISA Affiliates is or has been a participant in, or is or has been obligated to maintain or to make contributions to, a multiemployer plan (within the meaning of ERISA Section 3(37) and ERISA Section 4001 (a)(3)) or a plan that is subject to Title IV of ERISA. Except as disclosed on Schedule 3.16(g)(ii), neither Seller nor any of its ERISA Affiliates has sponsored, contributed to or been obligated under Titles I or IV of ERISA to contribute to a “defined benefit plan” (as defined in ERISA Section 3(35)). Except as disclosed on Schedule 3.16(g)(iii), Seller is not obligated to provide post-retirement medical benefits or any other unfunded post-retirement welfare benefits to or on behalf of any persons whatsoever (except the benefits pursuant to the continuation health coverage requirements under Section 4980B of the Code, ERISA Section 601, or applicable state law). All contributions that Seller or any ERISA Affiliate have been obligated to make to any Benefit Plan, including any multiemployer plan, have been duly and timely made. All Benefit Plans that are defined benefit plans as defined in Section 3(35) of ERISA are fully funded on a termination basis, and neither Seller nor any ERISA Affiliate has incurred or expects to incur any liability with respect to underfunding (on a termination basis) of any such defined benefit plan as described in Section 302 of ERISA.

(h) There are no pending or, to the best of Seller’s or Parent’s knowledge, threatened claims (other than routine and undisputed claims for benefits), assessments, complaints, proceedings or investigations of any kind in any court, arbitration or governmental agency with respect to any Benefit Plan which could reasonably be expected to have a Material Adverse Effect. No reportable event under Section 4043 of ERISA has occurred or, to the knowledge of Seller, will occur with respect to any Benefit Plan.

(i) Except as disclosed on Schedule 3.16(i), no Benefit Plan provides benefits, including death or medical benefits, beyond termination of service or retirement other than (i) coverage mandated by law, or (ii) death or retirement benefits under a Benefit Plan qualified under Section 401(a) of the Code. Except as disclosed in Schedule 3.16(i), Seller has clearly communicated to retirees that future changes may have to be made to the health care programs offered to retirees and/or that contributions or additional contributions may be required of retirees. Except as disclosed in Schedule 3.16(i), no officer of Parent, Seller or any of their Affiliates has made any representations on behalf of the Company which would limit Seller's ability to change post-retirement benefits.

(j) Each Benefit Plan covering any Employee or Former Employee which is subject to continuation health coverage requirements of Section 4980B of the Code or Section 601-608 of ERISA or any applicable state law has been maintained by Seller and/or its ERISA Affiliates in compliance with all such requirements for continuation coverage so that Seller, Buyer or such Benefit Plan shall not be subject to any damages or liability that could reasonably be expected to have a Material Adverse Effect. Each Benefit Plan subject to the portability, access and renewability provisions of Section K, Chapter 100 of the Code and Section 701 et seq. of ERISA is in compliance with such provisions so that Seller, Buyer or such Benefit Plan shall not be subject to any damages or liability that could reasonably be expected to have a Material Adverse Effect.

(k) As of January 1, 2001, the assets of the Seller's defined benefit plan exceeded the actuarial present value of the accumulated benefit obligation thereunder for all participants.

3.17 Absence of Undisclosed Liabilities. {tc \12 "3.17 Absence of Undisclosed Liabilities} Except as disclosed in Schedule 3.17, Seller has no liabilities with respect to the Business which would constitute Assumed Liabilities, either direct or indirect, matured or unmatured or absolute, contingent or otherwise, except:

(a) those liabilities set forth on the Interim Balance Sheet or referred to in the notes to the Historical Financial Statements and not heretofore paid or discharged;

(b) liabilities disclosed on Schedule 2.3(a)(iv), Schedule 2.3(a)(vi) or any of the other Schedules to this Agreement, provided it is reasonably apparent from such Schedule that an item disclosed thereon is a liability and the nature thereof;

(c) liabilities arising in the ordinary course of business under any Contract;

(d) liabilities incurred, consistent with past business practice, in or as a result of the normal and ordinary course of business since September 30, 2001;

(e) the obligations and liabilities set forth in Sections 5.9 hereof; and

(f) those other liabilities, which individually and in the aggregate, would not have a Material Adverse Effect.

3.18 No Pending Litigation or Proceedings. {tc \12 "3.18 No Pending Litigation or Proceedings} Except as disclosed in Schedule 3.18, there are no actions, suits, investigations or proceedings pending against or, to the best of Seller's or Parent's knowledge, threatened against or affecting, Seller, any Subsidiary, the Business or any of the Acquired Assets before any court or arbitrator or Authority which individually or in the aggregate, would have a Material Adverse Effect. Except as disclosed in Schedule 3.18, there are currently no outstanding judgments, decrees or orders of any court or Authority against Seller, any Subsidiary or Parent, which relate to or arise out of the conduct of the Business or the ownership, condition or operation of the Business or the Acquired Assets which individually or in the aggregate would have a Material Adverse Effect.

3.19 Supply of Utilities. {tc \12 "3.19 Supply of Utilities} Except as set forth on Schedule 3.19, the Real Estate has adequate arrangements for supplies of electricity, gas, oil, coal and/or sewer for all operations at the 2000 or current operating levels, whichever is greater. Except as set forth on Schedule 3.19, there are no actions or proceedings pending or, to the best of Seller's or Parent's knowledge, threatened that would adversely affect the supply of electricity, gas, coal or sewer to the Real Estate except for those which individually and in the aggregate would not have a Material Adverse Effect.

3.20 Insurance. {tc \12 "3.20 Insurance} Schedule 3.20 lists Seller Parties' policies and contracts in effect as of the date hereof for insurance covering the Business and the

Acquired Assets or Assumed Liabilities and the operation of the facilities constituting the Business owned or held by Seller or any Subsidiary, together with the risks insured against, coverage limits and deductible amounts.

3.21 Relationship with Customers. {tc \l2 "3.21 Relationship with Customers} As of the date hereof, Seller does not have any current customer which accounted for more than 5% of the net sales of the Business for the immediately preceding 12-month period. Schedule 3.21 is a list of all contracts with "wholesale" customers of Seller and the Subsidiaries.

3.22 WARN Act. {tc \l2 "3.22 WARN Act} Except as contemplated by Section 5.9 hereby or as set forth in Schedule 3.22 hereto, within six months prior to the date hereof, (i) neither Seller nor any Subsidiary has effectuated (a) a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Business; or (b) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Business; (ii) neither Seller nor any Subsidiary has been affected by any transaction or engaged in layoffs or employment terminations with respect to the Business sufficient in number to trigger application of any similar state or local law; and (iii) none of Seller's or any Subsidiary's employees who are employed in connection with the Business has suffered an "employment loss" (as defined in the WARN Act) . Seller and Parent shall timely perform and discharge all requirements under the WARN Act to the extent applicable and under applicable state and local laws and regulations for the notification of its Employees arising from the sale of the Acquired Assets pursuant to this Agreement up to and including the Closing Date for any Employees of Seller or any Subsidiary. After the Closing Date, Buyer shall be responsible for performing and discharging all requirements under the WARN Act to the extent applicable and under applicable state and local laws and regulations for the notification of any Transferred Employees arising from the sale of the Acquired Assets pursuant to this Agreement.

3.23 Condition of Assets. {tc \l2 "3.23 Condition of Assets} Except as set forth on Schedule 3.23, the buildings, machinery, equipment, tools, furniture, improvements and other fixed tangible assets of the Business included in the Acquired Assets are in good operating condition and repair, reasonable wear and tear excepted.

3.24 Brokerage. {tc \l2 "3.24 Brokerage} None of Seller or its Affiliates has made any agreement or taken any other action which might cause any Person to become entitled to a broker's or finder's fee or commission as a result of the transactions contemplated hereunder which could result in liability to Buyer or its Affiliates.

3.25 All Assets. {tc \l2 "3.25 All Assets} Except as set forth on Schedule 3.25 and for the Excluded Assets, the Acquired Assets include all assets, rights, properties and contracts the use of which is necessary to the continued conduct of the Business by Buyer substantially in the manner as it is currently conducted, including the service of all utility customers in substantially the same manner and at substantially the same service levels as provided by Seller and the Subsidiaries on the date hereof.



## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF BUYER{tc \l2 "ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER}

Buyer represents and warrants to Seller and Parent as follows:

4.1 Organization. {tc \l2 "4.1 Organization} Buyer is a municipal corporation duly organized and validly existing under the laws of the State of Indiana and has all requisite power and authority to own and operate the Acquired Assets and the Business.

4.2 Authorization and Enforceability. {tc \l2 "4.2 Authorization and Enforceability} Subject to Section 6.1(e), Buyer has full power and authority to, execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party. The execution, delivery and performance by Buyer of this Agreement and the Transaction Documents to which Buyer is a party have been duly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by Buyer. Subject to Section 6.1(e), this Agreement is a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditors' rights generally; except to the extent that injunctive or other equitable relief is within the discretion of a court and subject to the valid exercise of the constitutional powers of the Buyer, the State of Indiana, or any political subdivision or agency, commission or department thereof, and the United States of America. Upon execution and delivery of each of the Transaction Documents, as of the Closing Date, each of the Transaction Documents to which Buyer is a party will constitute the legal, valid and binding obligations of Buyer, enforceable against it in accordance with its respective terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditors' rights generally; except to the extent that injunctive or other equitable relief is within the discretion of a court; and subject to the valid exercise of the constitutional powers of the Buyer, the State of Indiana, or any political subdivision or agency, commission or department thereof, and the United States of America.

4.3 No Violation of Laws or Agreements. {tc \l2 "4.3 No Violation of Laws or Agreements} The execution, delivery and performance of this Agreement and the Transaction Documents by Buyer does not, and the consummation of the transactions contemplated hereby and thereby will not, except as set forth on Schedule 4.3, violate, conflict with, result in a breach of, or constitute a default (or an event which would with the passage of time or the giving of notice, or both, constitute a default) under, or result in or permit the termination, modification, acceleration, or cancellation of (i) any indenture, mortgage, loan or credit agreement, license, instrument, lease, contract, plan, permit, authorization, proof of dedication or other agreement or commitment, oral or written, to which Buyer is a party, or by which any of its assets or properties may be bound or affected, except for such violations, conflicts, breaches, terminations, modifications, accelerations, cancellations, interests or rights which, individually or in the aggregate do not have a material adverse effect on its ability to perform its obligations under this

Agreement and the Transaction Documents, or (ii) any judgment, injunction, writ, award, decree, restriction, ruling, or order of any court, arbitrator or Authority or any applicable ordinance, rule or regulation to which Buyer is subject other than those violations and conflicts which individually or in the aggregate do not have a material adverse effect on its ability to perform its obligations under this Agreement and the Transaction Documents.

4.4 Consents. {tc \l2 "4.4 Consents} No consent, approval or authorization of, or registration or filing with, any Person (governmental or private) is required in connection with the execution, delivery and performance by Buyer of this Agreement, the other Transaction Documents, or the consummation of the transactions contemplated hereby or thereby by Buyer except (i) as specified on Schedule 4.4 and (ii) for such consents, approvals, authorizations, registrations or filings, the failure to obtain or make would not individually or in the aggregate have a material adverse effect on its ability to perform its obligations under this Agreement and the Transaction Documents.

4.5 Brokerage. {tc \l2 "4.5 Brokerage} Neither Buyer nor any of its Affiliates has made any agreement or taken any other action which might cause any Person to become entitled to a broker's or finder's fee or commission as a result of the transactions contemplated hereunder which could result in liability to the Seller Parties.

## ARTICLE 5

### ADDITIONAL COVENANTS{tc \l2 "ARTICLE 5 ADDITIONAL COVENANTS}

5.1 Conduct of Business. {tc \l2 "5.1 Conduct of Business} Except (i) as otherwise specifically permitted by this Agreement, (ii) as set forth in Schedule 5.1 hereto or (iii) with the prior written consent of Buyer, from and after the date of this Agreement and until the Closing Date, each of Seller and Parent agree that:

(a) Seller shall conduct the Business as presently operated and only in the ordinary course of business consistent with past practice and shall (i) maintain the level of service currently being provided to customers of the Business and (ii) continue to offer all services currently offered to customers of the Business.

(b) Each shall promptly inform Buyer in writing of any specific event or circumstance of which it becomes aware or receives notice that has or is likely to have, individually or in the aggregate, taken together with the other events or circumstances, a Material Adverse Effect.

(c) Seller shall permit the insertion with IWC's bills of any publicity prepared by the Buyer for inclusion therein, provided, however, that insertion of such publicity is subject to Parent's approval, which approval shall not be unreasonably withheld.

(d) Seller shall not:

(i) change or modify in any material respect existing credit and collection policies, procedures and practices with respect to accounts receivable;

(ii) enter into any contract or commitment, waive any right or enter into any other transaction (except in the ordinary course of business) which would have a Material Adverse Effect;

(iii) expend or commit to expend on behalf of the Business any capital in excess of the capital expense provided for in the monthly capital expenditure plan ("Monthly Plan") set forth on Schedule 5.1(d)(iii), which would result in the acquisition of an additional asset that would be included in the Acquired Assets; or sell or lease or agree to sell or lease or otherwise dispose of any assets material to the Business, except in the ordinary course of the conduct of the Business, consistent with past practice;

(iv) without Buyer's prior written consent, permit the aggregate amount of Seller's and the Subsidiaries' debt, net of any cash and cash equivalents included in the Acquired Assets, to exceed \$230 million plus (A) capital expenditures allowed pursuant to Section 5.1(d)(iii), (B) expenditures allowed pursuant to the Exhibit of Cash Flows attached hereto as Exhibit F, and (C) amounts paid to Transferred Employees for accrued but unused vacation pay pursuant to Section 5.9(b);

(v) except in the ordinary course of business, consistent with past practice or as required under any of Seller's debt instruments or indentures, mortgage, pledge or subject to any Lien (other than Permitted Exceptions), any of the Acquired Assets;

(vi) change any compensation or benefits or grant any material new compensation or benefits payable to or in respect of any Employee except (i) as required by law, (ii) in the ordinary course, consistent with past practice and (iii) as required by the Collective Bargaining Agreements in existence on the date hereof; provided, however, no individual Employee shall in any event receive an increase in his or her compensation (including Employee's wages, salary, basis for calculating bonuses or commissions, severance and/or termination pay, vacation pay, and other monetary and non-monetary compensation) totaling in the aggregate in excess of three percent (3%) except as required by the Collective Bargaining Agreements or any Benefit Plan in existence on the date hereof;

(vii) change Seller's method of accounting or keeping its books of account or accounting practices with respect to the Business, except as required by GAAP; or

(viii) intentionally and willfully take or omit to take any action which if taken or omitted prior to the date hereof would constitute or result in a breach of any representations or warranties set forth in Sections 3.1, 3.2, 3.3, 3.4, 3.7, 3.8, 3.10, 3.14, 3.16 and 3.25 hereof (it being understood that the failure to cure a breach shall not, by itself, be an intentional and willful omission to take action).

5.2 Negotiations. {tc \l2 "5.2 Negotiations} Neither Parent nor Seller nor any Affiliate of either Parent or Seller (each such person being a "Section 5.2 Affiliate"), nor any officer, director, employee, representative or agent of Parent or Seller or any of their Section 5.2

Affiliates, shall, directly or indirectly, solicit or initiate or (subject to the fiduciary duties of the Board of Directors of Parent to its shareholders under applicable law as advised by counsel in a written opinion) participate in any way in discussions or negotiations with, or provide any information or assistance to, or enter into an agreement with any Person or group of Persons (other than Buyer or any Person Controlled by Buyer or under common Control with Buyer or any Persons providing financing to the parties hereto in connection with facilitating the consummation of the transactions contemplated by this Agreement) concerning any acquisition, merger, consolidation, liquidation, dissolution, disposition or other transaction (or series of such transactions) that would result in the transfer to any such Person or group of Persons of ten percent (10%) of the Acquired Assets (as measured by net book value of such assets on the date of each such transaction) or the acquisition, merger, consolidation, liquidation, dissolution, disposition or other transaction (or series of such transactions) involving Seller or Parent, if such acquisition, merger, consolidation, liquidation, dissolution, disposition or other transaction (or series of such transactions) would be inconsistent, in any respect, with the obligations of the Seller Parties hereunder (any of the foregoing transactions, a "Competing Transaction"). Parent will promptly notify Buyer of the substance of any inquiry or proposal concerning any such transaction that may be received by any of the directors or executive officers of Parent or Seller, their legal counsel or a Vice President or Managing Director of their financial advisor who is assigned to the Seller Parties' account.

5.3 Disclosure Schedules. {tc \12 "5.3 Disclosure Schedules} As promptly as practicable, the Seller Parties will provide Buyer with a supplement or amendment to the Disclosure Schedules with respect to any matter, condition or occurrence that is required to be set forth or described in the Disclosure Schedules. A matter, condition or occurrence shall be "required" to be set forth or described in the Disclosure Schedules if the failure to be so disclosed would result in a breach of the applicable representation or warranty (qualified by Material Adverse Effect where applicable) on the date hereof or on the Closing Date. In addition, Seller shall have the right at any time and from time to time prior to the Closing to supplement or amend the Disclosure Schedules. Seller may provide Disclosure Schedules with respect to any representation or warranty of this Agreement whether or not a specific schedule is referred to therein. In the event that any supplement or amendment of such Disclosure Schedules shall be provided later than five (5) Business Days prior to the Closing Date the Buyer shall have the right to delay the Closing for a period of five (5) Business Days in order for Buyer to review such supplement or amendment. No such supplement or amendment shall be deemed to cure any breach of or alter any representation or warranty made in this Agreement so as to permit the Closing to occur unless Buyer specifically agrees thereto in writing. The Seller Parties shall promptly inform Buyer, and Buyer will promptly inform the Seller Parties, of any fact or event that comes to their attention, the existence of which constitutes or likely will constitute a breach in any material respect of any representation or warranty in this Agreement. In addition, Buyer will, within five (5) days of receipt thereof, forward to Seller any written communication regarding a specific Lien or title defect affecting a specifically identified parcel of the Real Estate sent to an authorized representative of the Buyer, and sent by a party other than the Seller Parties, their legal counsel, financial advisors or representatives.

5.4 Mutual Covenants. {tc \12 "5.4 Mutual Covenants} Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agrees to use its

reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the sale and purchase and the other transactions contemplated by this Agreement, including during the time before an arbitrator's decision pursuant to Section 6.5 hereof, (and subject to the other terms of this Agreement, including Section 5.8 hereof) and including, but not limited to:

(a) cooperate with each other in determining whether filings are required to be made or consents required to be obtained in any jurisdiction in connection with the consummation of the transactions contemplated by this Agreement and in making or causing to be made any such filings promptly and in seeking to obtain timely any such consents;

(b) use all reasonable efforts to obtain promptly the satisfaction (but not waiver) of the conditions to the Closing of the transactions contemplated herein (each party hereto shall furnish to the other and to the other's counsel all such information as may be reasonably required in order to effectuate the foregoing action); and

(c) advise the other parties promptly if such party determines that any condition precedent to its obligations hereunder will not be satisfied in a timely manner.

5.5 Filings and Authorizations. {tc \l2 "5.5 Filings and Authorizations}

(a) The parties hereto will as promptly as practicable, make or cause to be made all such filings and submissions under laws, rules and regulations applicable to it or its Affiliates as may be required to consummate the terms of this Agreement, including all notifications and information to be filed with the Indiana Utility Regulatory Commission (the "IURC") pursuant to the Indiana Public Utility Code (the "Utility Code") and the joint petition attached hereto as Exhibit G. Any such filings and supplemental information will be in substantial compliance with the requirements of the applicable law, rule or regulation. Each of Buyer, on the one hand, and the Seller Parties, on the other, shall furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission to the IURC. The Seller Parties, on the one hand and Buyer, on the other, shall keep each other apprised of the status of any communications with, and inquiries or requests for additional information from, any Authority, including the IURC, and shall comply promptly with any such inquiry or request. Buyer shall meet with Parent on a monthly basis to provide status reports as to developments in proceedings before any Authority, including the IURC, and related negotiations. Each of Parent, Seller and Buyer will use its reasonable best efforts to obtain any clearance required from the IURC for the purchase and sale of the Acquired Assets in accordance with the terms and conditions hereof. Notwithstanding the foregoing, nothing contained in this Agreement will require or obligate any party or their respective Affiliates (i) to initiate, pursue or defend any litigation (or threatened litigation) to which any Authority (including the IURC) is a party; (ii) to agree or otherwise become subject to any material limitations on (A) the right of Buyer or its Affiliates effectively to control or operate the Business, (B) the right of Buyer or its assigns to acquire or hold the Business or the right of Seller or its Affiliates to hold the Excluded Assets, or (C) the right of Buyer to exercise full rights of ownership of the Business or all or any material portion of the Acquired Assets or the right of Seller to exercise full rights of ownership of any material portion of the Excluded Assets or the Purchase Price; or (iii) to agree or otherwise be required to sell or otherwise dispose of, hold separate (through the establishment of a trust or otherwise), or divest itself of all or any portion of the business, assets or operations of Parent, Seller, Buyer, any assignee of Buyer or the Business (except, in the case of clauses (ii) and (iii), for limitations and requirements currently in effect). The parties agree that no representation, warranty or covenant of Buyer, Parent or Seller contained in this Agreement shall be breached or deemed breached as a result of the failure by Parent on the one hand or the Seller Parties, on the other, to take any of the actions specified in the preceding sentence.

(b) Buyer and IWC will jointly move the IURC to suspend the procedural order entered March 1, 2001 in Cause No. 41821 and will jointly move the Court of Appeals to stay proceedings in the pending appeal, 93A02-00102-EX-85. If that procedural order is reinstated for any reason, Buyer and IWC agree jointly to request the IURC to extend all dates provided for by the amount of time that the order was suspended.

5.6 Public Announcement. {tc \l2 "5.6 Public Announcement} No party hereto shall make or issue, or cause to be made or issued, any public announcement or written statement concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which will not be unreasonably withheld or delayed), unless counsel to such party advises that such announcement or statement is required by law (in which case the

parties shall make reasonable efforts to consult with each other prior to such required announcement).

5.7 Further Assurances. {tc \12 "5.7 Further Assurances} Each of Buyer, Parent and Seller, from time to time after the Closing, at Buyer's or Seller's request, will execute, acknowledge and deliver to the applicable person, (and cause the Subsidiaries to execute, acknowledge and deliver) such other instruments of conveyance and transfer and will take such other actions and execute such other documents, certifications, and further assurances as Buyer or Seller, as the case may be, may reasonably require in order to transfer, in accordance with the terms and conditions of this Agreement, more effectively in Buyer or to put Buyer more fully in possession of any of the Acquired Assets or better to enable Buyer to complete, perform and discharge any of the Assumed Liabilities. Each party shall cooperate and deliver such instruments and take such action as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

5.8 Cooperation; Access. {tc \12 "5.8 Cooperation}

(a) Buyer, Parent and Seller shall cooperate and shall cause their respective Affiliates, officers, employees, agents and representatives to cooperate to ensure the orderly transition of the Business from Seller and the Subsidiaries to Buyer and to minimize the disruption to the Business resulting from the transactions contemplated hereby.

(b) Without limiting the foregoing, neither Buyer, nor Parent and Seller (nor any of their respective Affiliates) shall make any filings pursuant to federal or state securities laws ("Securities Filings") or make any consent solicitations to holders of Assumed Indebtedness which include any information about Parent, Seller, Buyer (or their respective Affiliates) or the transactions contemplated hereby without the prior written approval of the other party, which approval shall not be unreasonably withheld or delayed; provided, however, that if such consent is withheld or delayed, any party may so disclose such information in its reasonable judgment to the extent such party's counsel advises it that such disclosure is required by applicable law. Each of Buyer, Parent and Seller shall, and shall cause their respective Affiliates to, comply with all applicable federal and state securities laws in connection with this Agreement and the transactions contemplated hereby (including any solicitation of consents of holders of Assumed Indebtedness), and all information supplied by any party for inclusion in any filing or consent solicitation, shall be true and correct in all material respects and shall not contain any untrue statement of a material fact or omit to state any material fact which is required to be stated therein or which is necessary to make the statements contained therein not misleading in light of the circumstances in which they were made.

(c) The Seller Parties shall cooperate fully with Buyer as to its sale, or the sale by The Indianapolis Local Public Improvement Bond Bank (the "Bond Bank"), of bonds or other securities, including supplying or reviewing information used in any disclosure or finance related documents and providing reasonable assurances to the Buyer and the Bond Bank as to information provided by the Seller Parties.

(d) Seller shall give Buyer and its representatives (including Buyer's Accountants, consultants, counsel and employees), upon reasonable notice and during normal business hours, full access to the properties, contracts, employees, books, records and affairs of Seller to the extent relating to the Business and the Acquired Assets, and shall cause its officers, employees, agents and representatives to furnish to Buyer all documents, records and information (and copies thereof), to the extent relating to the Business and the Acquired Assets, as Buyer may reasonably request. Buyer will have the continuing ability to conduct environmental assessments, provided that any invasive assessments will require the prior written consent of the Seller, which consent shall not be unreasonably withheld. Except to the extent disclosed in the Disclosure Schedules in accordance with Sections 5.3 and 8.4, no investigation or receipt of information by Buyer pursuant to, or in connection with, this Agreement, shall diminish or obviate any of the representations, warranties, covenants or agreements of Seller or Parent under this Agreement or the conditions to the obligations of Buyer under this Agreement. All information provided to Buyer under this Agreement shall be held, to the extent permitted by law, subject to the terms and conditions of the Confidentiality Agreement dated August 15, 2000 between Buyer and Credit Suisse First Boston on behalf of Seller (the "Confidentiality Agreement").

5.9 Employees; Employee Benefits. {tc \12 "5.9 Employees; Employee Benefits}

(a) Schedule 5.9(a) lists divisions and all active and inactive salaried and hourly employees (as of the date of this Agreement) in each division by Seller or any of the Subsidiaries whose primary responsibilities relate to the Business. With respect to inactive employees, Schedule 5.9(a) sets forth the reasons such employees are not currently actively employed (e.g., short-term disability, Family Medical Leave Act, etc.).

All individuals referred to on Schedule 5.9(a) are herein referred to as the "Employees." Schedule 5.9(a) lists job classifications of those employees whose terms and conditions of employment are subject to a Collective Bargaining Agreement ("Union Employees") and number of employees in each job classification. As soon as practical after the execution of this Agreement, Buyer and Seller shall supplement Schedule 5.9(a) with the name, job title, unused vacation, current base salary or hourly wage, date of hire and assigned location of each Employee. At the Closing, Seller shall provide an updated Schedule 5.9(a) which shall disclose all the information required under the preceding sentence as of the most recent practicable date prior to Closing.

(b) Effective as of the Closing, Buyer shall offer employment to those Employees included on the Schedule 5.9(a), which will be provided at Closing. Such Employees who accept employment are herein referred to as the "Transferred Employees." Transferred Employees shall be employees-at-will, and Buyer will have no obligation to retain any such Transferred Employees in the employment of the Buyer for any specified period of time from and after the Closing; provided, however, if a Transferred Employee is a Union Employee, such Transferred Employee shall continue employment in accordance with the terms and subject to the conditions of the relevant Collective Bargaining Agreement. Subject to the provisions of this Section 5.9, Buyer shall provide each Transferred Employee with a substantially comparable position and hourly wages and/or base salary (but not bonuses, commissions, severance pay, non-competition or termination benefits, employee benefits, or other monetary or non-monetary benefits) that are



substantially comparable to those provided by Seller or a Subsidiary as of the Closing Date. Subject to the valid exercise of the constitutional and statutory powers of the Buyer, Buyer agrees to comply with all applicable legal requirements with respect to Union Employees (including any applicable duty to bargain with the union employees' bargaining representative). At Closing, with respect to Transferred Employees' accrued but unused vacation for the balance of the calendar year in which the Closing occurs, either (i) Seller shall pay the Transferred Employees for their accrued but unused vacation, or (ii) to the extent a Transferred Employee so elects, Buyer shall credit such Transferred Employee with the number of vacation days equal to the Transferred Employee's vacation day entitlement for the calendar year of Closing reduced by the number of vacation days such Transferred Employee has taken on or before Closing. Nothing in this Section 5.9 shall limit Buyer's authority to terminate the employment of any Transferred Employee at any time and for whatever reason. Until the second anniversary of the Closing Date, neither Seller nor any of its Affiliates shall directly or indirectly solicit or offer employment to any Transferred Employee then employed by Buyer or its Affiliates.

(c) Subject to the valid exercise of the constitutional and statutory powers of the Buyer, Buyer shall assume each Benefit Plan except to the extent there are Benefit Plans listed as "Retained Liabilities" on Schedule 2.3(c), effective as of the Closing ("Assumed Benefit Plans"). Buyer shall be solely responsible for any liability or expense which is included in the Financial Statements, and would be included in the financial statements of the Business as of Closing, that relates to or arises under the Assumed Benefit Plans, except (i) as otherwise provided in this Agreement, (ii) for contributions due to the Benefit Plans for time periods prior to Closing, and (iii) for medical expenses incurred by the Employees under the Seller's group health insurance plan prior to Closing, ("Assumed Plan Liabilities"). For purposes of this Section, medical expenses are incurred when the services giving rise to the claim are rendered, regardless when the expenses are billed or paid. At Closing, Buyer or an Affiliate shall be substituted for Seller or an Affiliate as the sponsoring employer of each Assumed Benefit Plan, and Buyer shall be vested with all of the powers and rights previously vested in Seller or an Affiliate with respect to the Assumed Benefit Plans, including the right to amend or terminate any or all of the Benefit Plans.

(d) Immediately prior to Closing, Seller or its Affiliates shall terminate at their sole expense all Benefit Plans that Buyer may not assume pursuant to Section 5.9(c) above because of constitutional or statutory restrictions on its power ("Unassumed Plans"). Seller is solely responsible for any liability, claim or expense arising at any time from or relating to Unassumed Plans.

(e) Other than Assumed Plan Liabilities and liabilities relating to Transferred Employees as expressly provided in this Section 5.9, Seller shall be solely responsible for any liability, claim or expense arising from or relating to the employment relationship between Seller or any of its Affiliates and the Employees either prior to, on or after Closing. Except as otherwise provided in this Agreement, Buyer shall be solely responsible for any liability, claim or expense arising from or relating to the employment relationship between Buyer and the Transferred Employees after Closing.

(f) From and after Closing, each Transferred Employee participating in an Unassumed Plan shall become immediately entitled to participate in any employee benefit plan, in accordance with the terms of such plan, maintained by Buyer or its Affiliates, including without limitation, group hospitalization, medical, life and disability insurance plans, severance plans, tax qualified retirement, savings and profit sharing plans and stock option and stock award plans ("Buyer Plans") in which similarly situated employees of Buyer and its Affiliates participate, and to the same extent as such employees of Buyer and its Affiliates.

(g) For purposes of eligibility and vesting in any employee benefit plan provided by Buyer or its Affiliates, the Transferred Employees shall be given credit for their service with Seller and its Affiliates. Any co-payments and deductibles paid by Transferred Employees under the Seller's medical insurance plan during the year of the Closing shall be counted under the Buyer's medical insurance plan for that same year, to the extent permissible. Buyer shall waive any pre-existing condition exclusions contained in any Buyer Plan for conditions existing at the Closing that would otherwise apply to Transferred Employees and their dependents, provided that such waiver of pre-existing condition shall not extend to any condition that prevented coverage of a Transferred Employee or dependent thereof under a comparable Benefit Plan.

(h) Buyer agrees to provide post-retirement health care and life insurance benefits to Former Employees listed on Schedule 5.9(h), which will be provided at Closing and who are receiving those benefits from the Seller at Closing. Subject to the legal requirements applicable to Union Employees, Buyer has no obligation to provide post-retirement health care and/or life insurance benefits to any additional retirees.

5.10 Taxes. {tc \12 "5.13 Taxes} The Seller Parties, on the one hand, and Buyer, on the other, shall (a) each provide the other with such assistance as may reasonably be requested by either of them in connection with the preparation of any Tax return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to Taxes; (b) each retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (c) each provide the other with any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any Tax return of the other for any period (which shall be maintained confidentially). Without limiting the generality of the foregoing, Buyer, on the one hand, and the Seller Parties, on the other, shall retain, until the applicable statutes of limitations (including all extensions) have expired, copies of all Tax returns, supporting workpapers, and other books and records or information which may be relevant to such returns for all Tax periods or portions thereof ending before or including the Closing Date, and shall not destroy or dispose of such records or information without first providing the other party with a reasonable opportunity to review and copy the same.

5.11 Surveys. {tc \12 "5.14 Surveys}

(a) Seller shall cooperate with Buyer and use its commercially reasonable efforts to cause to be delivered to Buyer, at Seller's sole cost and expense (except as provided below), no later than 60 days after the date of this Agreement, (i) surveys (collectively, the "Surveys") of each parcel of Real Estate identified on Exhibit A to Schedule 1.1(a) (including as built surveys

of those parcels with buildings, structures or other improvements), excepting only those parcels comprising Geist Reservoir and Morse Reservoir (collectively, the “Reservoirs”) and Broad Ripple Canal (the “Canal”) in accordance with (A) the 1999 minimum standard detail requirements for ALTA/ACSM Land Title Surveys, including Table A items 2,3,4,6,7,8,9,10,11 and 13 and such additional or different Table A Items as Buyer may, in its sole, but reasonable discretion, require and (B) with the Accuracy Standards (as adopted by ALTA and ACSM) of an Urban Survey, and showing all easements and other appurtenances benefiting and all easements and other encumbrances burdening such parcel and (ii) legal descriptions of the Real Estate as reflected on the Surveys. Each Survey shall be certified to the Buyer, the Title Company and any other person reasonably requested by Buyer and shall comply with any requirements imposed by the Title Company as a condition to the removal of any survey exception from the general exceptions to the Title Policy covering the Real Estate shown on such survey and (iii) maps depicting the Real Estate occupied by the Reservoirs and the Canal, determined in a manner reasonably acceptable to Buyer, and which the Title Company finds acceptable for purposes of issuing the Title Commitment and the Title Policy (each as defined in Section 5.15 below) for such Real Estate.

(b) Buyer shall have 15 days after it receives the Survey to propose such adjustments in the Survey as it, in its reasonable, good faith discretion, determines are necessary to operate the Business. Upon the expiration of such 15-day period, Buyer will notify Seller in writing of such proposed adjustments. In the event that Seller or the surveyor disputes any such adjustments and Buyer, Seller and the surveyor are unable to resolve such dispute within 30 days after the end of the 15-day period, Seller and Buyer shall each have the right to terminate this Agreement upon written notice within 10 days after the end of such 30-day period.

5.12 Guarantees. {tc \l2 "5.15 Guarantees} Buyer shall use its reasonable efforts to assist Parent in obtaining full and complete releases on the guarantees listed on Schedule 5.12 made by Parent or Parent’s Affiliates of Seller’s obligations with respect to certain of the Assumed Indebtedness. For purposes of this Section 5.12 and Section 5.13, reasonable efforts: (a) shall include Buyer’s assumption or defeasance of the Assumed Indebtedness on the terms set forth in this Agreement; and (b) shall not be deemed to include any obligation on the part of Parent or any of Parent’s Affiliates to provide a guarantee of Buyer’s obligations under each such debt instrument assumed by Buyer at Closing.

5.13 Assumption or Defeasance of Seller Debt. {tc \l2 "5.16 Assumption of Seller Debt} Each of Buyer and Parent shall use its reasonable efforts (as defined in Section 5.12) to assist Seller in obtaining all consents and releases and taking such other actions as may be required to enable Buyer to assume or defease at the Closing all of Seller’s liabilities and obligations under the Assumed Indebtedness to the extent provided in Section 2.3.

5.14 Schedule of Permits. {tc \l2 "5.17 Schedule of Permits} Within sixty (60) days following the execution of this Agreement, Parent and Seller shall deliver to Buyer a schedule, to be identified as Schedule 5.14, which sets forth all material Permits required for the use of the Acquired Assets and the operation of the Business by Buyer substantially in the manner as it was conducted prior to the date hereof. For purposes of this Section 5.14 material Permits shall include those required for the service of all utility customers at substantially the same service levels as provided by Seller on the date of this Agreement. All Permits listed on Schedule 5.14

that are required to be listed on Schedule 3.3 or Schedule 3.9 shall be so designated. Seller has made or will make prior to the Closing Date timely applications for renewals of all such Permits listed on Schedule 5.14 which under applicable law must be filed prior to the Closing Date to maintain the Permits listed on Schedule 5.14 in full force and effect.

5.15 Title Information. {tc \l2 "5.18 Title Information} Within sixty (60) days following the execution of this Agreement, Seller shall use its reasonable efforts to deliver to Buyer true, correct and complete copies of all existing title policies, surveys, leases, deeds, instruments and agreements relating to title to the Real Estate in Seller's or any Subsidiary's possession. Seller shall and shall cause its Affiliates to cooperate with Buyer and use its commercially reasonable efforts to assist Buyer in obtaining, good and valid, irrevocable ALTA title insurance commitments (collectively, the "Title Commitments," and each a "Title Commitment"), in final form, from one or more title insurance companies reasonably acceptable to Buyer (collectively, the "Title Company"), irrevocably committing the Title Company (subject only to the satisfaction of any industry standard requirements contained in the Title Commitment and reasonably acceptable to Buyer) to issuing ALTA form of title insurance policies insuring good, valid, indefeasible fee simple title to the Real Estate, in all cases, in the respective amounts that Buyer reasonably requests prior to Closing, subject to no Liens or other exceptions to title other than Permitted Exceptions (collectively the "Title Policies") and insuring pedestrian and vehicular access to and from one or more legally and physically open public rights of way satisfactory to Buyer, in its sole but reasonable discretion. Each of the Title Commitments shall be effective as of a date occurring not earlier than the date of this Agreement and the effective dates of each of them shall be brought down to the time of the Closing. Each such Title Policy shall include such endorsements thereto as may reasonably be requested by Buyer; provided, however, that any endorsements other than (i) extended coverage over the so-called standard exceptions, (ii) access endorsements, and (iii) ALTA Form 3.1 zoning endorsements shall be at the sole cost and expense of Buyer. On or prior to the Closing Date, Seller shall execute and deliver, or cause to be executed and delivered, to the Title Company any affidavits, standard gap indemnities and similar documents reasonably requested by the Title Company in connection with the issuance of the Title Commitments or the Title Policies. Except as otherwise provided in this paragraph, Seller shall pay at Closing all premiums and other fees, costs and expenses necessary for the issuance of the Title Policies.

5.16 Transaction with Related Parties. {tc \l2 "5.19 Transaction with Related Parties} Parent shall cause to be terminated, no later than the Closing Date, all contracts, commitments and agreements (including employment relationships) relating to the Acquired Assets or the Business, between Seller or any of the Subsidiaries, on the one hand, and Parent or any of its Affiliates (other than Seller and the Subsidiaries), on the other hand. Seller shall be solely liable for any contractual or other claims, express or implied arising out of the termination and cancellation of any of the foregoing raised by any party thereto.

5.17 Approval by Parent. {tc \l2 "5.20 Approval by Parent} Parent shall, as the sole owner of common stock of Seller, vote all of such shares of common stock to approve this Agreement and the transactions contemplated hereby.

5.18 Supplemental Information. {tc \l2 "5.21 Supplemental Information}

(a) Seller shall provide Buyer, within five (5) days of the execution or the date of receipt thereof, a copy of (i) each Contract (other than with respect to which the Business' total annual liability or expense is less than \$100,000 per such Contract or which is terminable without cause on thirty (30) days' or shorter notice without liability) entered into by Seller or any Subsidiary after the date hereof and prior to the Closing Date; (ii) a copy of any written notice for assessments for public improvements against the Real Estate received after the date hereof and prior to the Closing Date; (iii) a copy of the filing of any condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of any of the Real Estate received after the date hereof but prior to the Closing Date; and (iv) a copy of any Contract where Seller or any Subsidiary is a lessee relating to the use or occupancy of the Real Estate and where such Contract involves annual payments in excess of \$25,000 entered into by Seller or any Subsidiary after the date hereof and prior to the Closing Date.

(b) Within five (5) days of the receipt of notice of violation Seller shall notify Buyer of any violations of state or federal drinking water standards which, if such violations existed on the date hereof, would be required to be disclosed pursuant to Section 3.8(j) hereof, and shall promptly notify Buyer of the actions proposed to be taken by Seller or any Subsidiary to correct or otherwise respond to such violations.

(c) Seller shall deliver to Buyer within ten (10) days of the execution hereof final Seller Disclosure Schedules 3.4, 3.5, 3.6, 3.13, 3.16(a), 3.16(g)(iii), 3.16(i) and 5.12, which contain such information as shall be necessary to make all of the representations and warranties of the Seller Parties true, accurate and complete as of the time of delivery. Buyer shall have until December 15, 2001, to complete its review of the final Disclosure Schedules and be reasonably satisfied with such final Disclosure Schedules.

(d) Seller shall deliver to Buyer within ten (10) days of the execution hereof the Exhibit of Cash Flows, Exhibit F, required by Section 5.1(d)(iv). Buyer shall have five (5) days after such delivery to review Exhibit F and be reasonably satisfied therewith.

5.19 Insurance. {tc \l2 "5.22 Insurance} Seller or Parent shall arrange, to the reasonable satisfaction of Buyer, for the insurance policies listed on Schedule 3.20 (or any successor or replacement policies thereto) to provide coverage for events or occurrences occurring prior to Closing but reported within five years of the Closing Date.

5.20 Financial Statements. {tc \l2 "5.23 Financial Statements} Seller shall use its reasonable best efforts to provide to Buyer, within 60 days after the date of this Agreement, (a) audited consolidated financial statements for the Business as of and for the year ended December 31, 1999, (b) audited consolidated financial statements for the Business as of and for the year ended December 31, 2000, in each case which were derived from the audited consolidated financial statements of Seller and the Subsidiaries, and (c) unaudited consolidated financial statements of the Business as of September 30, 2001 (collectively, the "Business Financial Statements"). The Business Financial Statements will fairly present in all material respects the consolidated financial position and the results of operations of the Business in accordance with GAAP consistently applied, except as set forth on Schedule 3.4, and subject, in the case of unaudited statements, to the absence of notes and normal year-end audit adjustments.

5.21 Tax Exempt Bonds. {tc \l2 "5.24 Tax Exempt Bonds} Seller Parties shall cooperate with Buyer to assist Buyer's analysis of the Acquired Assets to determine the amount of debt that Buyer can issue on a tax-exempt basis.

## ARTICLE 6

### CONDITIONS PRECEDENT; TERMINATION{tc \l2 "ARTICLE 6 CONDITIONS PRECEDENT, TERMINATIONS}

6.1 Conditions Precedent to Obligations of Buyer. {tc \l2 "6.1 Conditions Precedent to Obligations of Buyer} The obligations of Buyer to purchase the Acquired Assets and assume the Assumed Liabilities and to consummate the other transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Buyer in its sole discretion):

(a) Performance of Agreements; Representations and Warranties. Seller and Parent shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them at or prior to the Closing; and the representations and warranties set forth in this Agreement made by Seller and Parent shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct as of such date or time), provided that for purposes of this condition, such representations and warranties (other than the representation and warranty set forth in Section 3.25) shall be deemed to be so true and correct unless the failure or failures of all such representations and warranties to be so true and correct, either individually or in the aggregate, and without giving effect to any qualification as to materiality or Material Adverse Effect set forth in such representations or warranties, would reasonably be expected to have a Material Adverse Effect. Buyer shall have been furnished with a certificate of the President or Vice President of Seller dated the Closing Date, certifying to the foregoing.

(b) Seller Debt. Seller shall have obtained all consents, releases and legal opinions, if any, required to enable the Assumed Indebtedness to be (i) assumed or defeased by Buyer or (ii) repaid at Closing without premium or penalty and for the indebtedness included in the Retained Liabilities to be assigned by Seller to a Parent financing subsidiary; and Seller shall have obtained all consents or releases required pursuant to the Indenture of Mortgage of Deed of Trust dated as of July 1, 1936, as amended and supplemented, between IWC and Fidelity Bank, National Association as trustee, as supplemented (the "Mortgage Indenture") to enable Seller to sell the Acquired Assets to Buyer at the Closing, free and clear of all Liens other than (i) Permitted Exceptions and (ii) Liens securing Taxes, assessments, governmental charges or levies, or the claims of materialmen, mechanics, carriers and like persons, all of which are not yet due and payable or which are being contested in good faith or (iii) such other Liens which, individually or in the aggregate, do not have a change or effect (or series of related changes or effects) which has or is reasonably likely to have a material adverse change in or effect upon the

business, assets, condition (financial or otherwise), or results of operations of the business of the Seller Parties taken as a whole.

(c) Completion of Due Diligence. Buyer shall have completed its due diligence investigation of Seller and the Subsidiaries and shall not have discovered any information after the execution of this Agreement in light of which Buyer determines, in its reasonable, good faith discretion, that consummation of the transactions contemplated hereby, under the terms and subject to the conditions set forth in this Agreement, would not be in the best interests of Buyer. This condition will be deemed to have been satisfied unless Buyer notifies Parent and Seller prior to December 15, 2001 that Buyer has discovered such information.

(d) Buyer Financing. Buyer shall have obtained financing using a combination of investment grade tax-exempt or taxable municipal bonds or other securities on terms that are reasonably satisfactory to Buyer.

(e) City-County Council Approval. Buyer shall have (i) obtained approval of this Agreement and the transactions contemplated hereby from the City-County Council of the Consolidated City of Indianapolis and (ii) completed all necessary statutory procedures to effectuate such transactions, including all actions required for any board or department of Buyer.

(f) Injunction; Litigation. (i) No statute, rule, regulation or order of any court or Authority shall be in effect which restrains or prohibits the transactions contemplated by this Agreement or which would materially limit or materially adversely affect Buyer's ownership of all or any material portion of the Acquired Assets, nor (ii) shall there be pending or threatened any litigation, suit, action or proceeding by any party, or any federal, state or local legislation or regulation, which would reasonably be expected to materially limit or materially adversely affect Buyer's ownership of the Acquired Assets.

(g) Documents. Seller and Parent shall have delivered the Surveys, Title Policies and all of the certificates, instruments, contracts and other documents specified to be delivered by it hereunder, including pursuant to Section 2.7 hereof and shall have made arrangements satisfactory to Buyer to deliver to Buyer as promptly as practicable after the Closing, such records (including customer and employee records) necessary to own and operate the Business.

(h) Real Estate. As of the Closing Date, the Real Estate, as surveyed or otherwise identified pursuant to Section 5.11 hereof, as subject to the Permitted Exceptions, will be adequate to operate the Business consistent with past practice, including the service of all utility customers in substantially the same manner and at substantially the same service levels as Seller has heretofore provided, and Buyer shall have been furnished with a certificate of the President or Vice President of Seller and Parent dated the Closing Date, certifying to the foregoing, which certification shall not survive the Closing.

(i) Shareholder Approval. This Agreement and the transactions contemplated hereby shall have been approved by the holders of a majority of the issued and outstanding shares entitled to vote thereon of (i) common stock of Seller and (ii) preferred stock of Seller, if necessary.

(j) Financial Statements. (i) Seller and Subsidiaries shall have no outstanding debt except as listed on Exhibit E (the "Debt Schedule"), (ii) the aggregate amount of Seller's and the Subsidiaries' debt as of the Closing Date, net of any cash and cash equivalents included in the Acquired Assets, shall not exceed \$230 million plus capital expenditures allowed pursuant to Section 5.1(d)(iii) plus debt allowed pursuant to Section 5.1(d)(iv), and (iii) Buyer shall have confirmed to its reasonable satisfaction that the EBITDA, the components of which are calculated in accordance with GAAP, of the Business for the year ended December 31, 2000 was no less than \$45.4 million.

6.2 Conditions Precedent to Obligations of Seller Parties. {tc \12 "6.2 Conditions Precedent to Obligations of Seller Parties} The obligations of the Seller Parties to cause the sale of the Acquired Assets and to consummate the other transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by the Seller Parties in their sole discretion):

(a) Performance of Agreements; Representations and Warranties. Buyer shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them at or prior to the Closing; and the representations and warranties set forth in this Agreement made by Buyer shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct as of such date or time), provided that for purposes of this condition, such representations and warranties shall be deemed to be so true and correct unless the failure or failures of all such representations and warranties to be so true and correct, either individually or in the aggregate, and without giving effect to any qualification as to materiality or material adverse effect set forth in such representations or warranties, would reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement. Seller shall have been furnished with a certificate of the Chairman of the Indianapolis Bond Bank or the Chief of Staff of the Mayor's Office, dated the Closing Date, certifying to the foregoing.

(b) Injunction; Litigation. (i) No statute, rule, regulation or order of any court or Authority shall be in effect which restrains or prohibits the transactions contemplated by this Agreement or which would limit or materially adversely affect Seller's or any Subsidiary's ownership of all or any material portion of its properties, nor (ii) shall there be pending or threatened any litigation, suit, action or proceeding by any party which could reasonably be expected to materially limit or materially adversely affect Seller's or any Subsidiary's ownership of any of its properties.

(c) Opinion. Parent shall have received the favorable opinion of Schiff Hardin & Waite to the effect that Closing of the transactions contemplated by this Agreement will not cause Seller to be ineligible to receive, either in whole or in part, non-recognition treatment in respect of such transactions under Section 1081 of the Code.



6.3 Condition Precedent to Obligations of Both Parties. {tc \l2 "6.3 Condition Precedent to Obligation of Both Parties}The IURC shall have issued an order ("Order") approving the transactions contemplated hereby and affirming that the regulatory treatment with respect to the Business in existence as of the date of this Agreement afforded to Seller and the Subsidiaries (including as to the recovery of deferred treatment plant costs and recovery of deferred billings) shall be continued following the transactions contemplated hereby, and such Order shall not contain any restrictions or conditions (other than those in effect on the date hereof) which would have a Material Adverse Effect, and such Order shall be final and nonappealable. All existing litigation and actions among the parties shall have been settled and dismissed and there shall be no other proceedings pending among the parties hereto. The parties shall have obtained the statutory and regulatory consents and approvals listed on Schedule 6.3 hereto and all other statutory and regulatory consents and approvals which are required under the laws or regulations of the United States and other Authorities in order to consummate the transactions contemplated hereby and to permit Buyer to conduct the Business as it is currently being conducted other than those the failure of which to obtain would not have a Material Adverse Effect.

6.4 Termination. {tc \l2 "6.4 Termination} This Agreement may be terminated at any time prior to the Closing Date:

- (a) by mutual written consent of Seller, Parent and Buyer;
- (b) by any of Seller, Parent or Buyer if (i) any governmental or regulatory body the consent of which is a condition to the obligations of the parties to consummate the transactions contemplated hereby shall have determined not to grant its consent and all appeals of such determination shall have been taken and have been unsuccessful; (ii) any court of competent jurisdiction shall have issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and such order, judgment or decree shall have become final and nonappealable; or (iii) upon notice given by any party that is not in breach of the Agreement to the other party hereto in the event the Closing shall not have occurred on or before April 30, 2002; or
- (c) by Seller or Buyer pursuant to Section 5.11(b); or
- (d) by Parent (provided it is not in breach of this Agreement) upon written notice of termination to Buyer at any time if it is a reasonable certainty that the Closing will not occur on or before April 30, 2002.

For purposes of clause (d), the determination as to whether the Closing will occur by April 30, 2002 shall initially be made by Parent in its reasonable good faith discretion; provided that if Buyer disagrees with Parent's determination, the matter shall be referred to arbitration in accordance with Section 6.5.

If this Agreement is terminated and the transactions contemplated hereby are abandoned as described in this Section 6.4, this Agreement shall become void and of no further force and effect, except for the provisions of Section 5.6 relating to publicity, Section 3.24 and 4.5 relating

to brokerage, and Section 8.6 relating to jurisdiction. Nothing in this Section 6.4 shall be deemed to release either party from any liability for any willful breach by such party of the terms and provisions of this Agreement.

6.5 Arbitration. {tc \l2 "6.5 Arbitration}

(a) Any dispute as to whether it is a “reasonable certainty” that the Closing will occur on or prior to April 30, 2002 shall be submitted to binding arbitration under this Section 6.5. Buyer shall request arbitration via written notice to Parent within five days of Buyer's receipt of Parent's written notification of termination delivered pursuant to Section 6.4(d). Such arbitration shall be conducted by one arbitrator qualified by education, experience or training to render a decision upon the issues in dispute, who has not previously been employed by any of the Seller Parties or Buyer, and who does not have a direct or indirect interest in any party or the subject matter of the arbitration. Such arbitrator shall either be mutually agreed upon by Buyer and Parent within five days after written notice from Buyer to Parent requesting arbitration or, failing agreement, shall be selected under the expedited rules of the American Arbitration Association (the “AAA”).

(b) Such arbitration shall be held in Indianapolis, Indiana. Parent shall pay the cost of the arbitrator and the arbitration proceeding, and each party shall be responsible for its own expenses and those of its counsel or other representative. The commercial arbitration rules of the AAA shall apply to the extent not inconsistent with the rules herein specified.

(c) The arbitration shall be conducted according to the following rules:

(i) The arbitration hearing shall be conducted on a single day, without continuance or adjournment. Each of Parent and Buyer shall have a maximum of one hour to make its presentation to the arbitrator. The arbitrator shall render its decision within two hours after completion of the presentations of the parties.

(ii) There shall be no pre-hearing written interrogatories, written requests for admission, discovery depositions or other pre-hearing submissions.

## ARTICLE 7

### CERTAIN ADDITIONAL COVENANTS{tc \l2 "ARTICLE 7 CERTAIN ADDITIONAL COVENANTS}

7.1 Certain Taxes and Expenses. {tc \l2 "7.1 Certain Taxes and Expenses} The Seller Parties, on the one hand, and Buyer, on the other hand shall share equally all state and local sales, use, transfer, real property transfer, documentary stamp, recording and other similar taxes arising from and with respect to the sale and purchase of the Acquired Assets, regardless of one or the other party being designated as the responsible party under the applicable act, ordinance, rule or regulation. Buyer shall be responsible for the accounting expense incurred in connection with the audits of the Business Financial Statements. Except as otherwise provided in this Agreement, each of the parties hereto shall bear its respective accounting, legal and other expenses incurred in connection with the transactions contemplated by this Agreement.

7.2 Maintenance of Books and Records. {tc \l2 "7.2 Maintenance of Books and Records} The Seller Parties, on the one hand, and Buyer, on the other hand, shall cooperate fully with each other after the Closing so that (subject to any limitations that are reasonably required to preserve any applicable attorney-client privilege) each party has access to the business records, contracts and other information existing at the Closing Date and relating in any manner to the Acquired Assets or the Assumed Liabilities or the conduct of the Business (whether in the possession of the Seller Parties or Buyer). No files, books or records existing at the Closing Date and relating in any manner to the Acquired Assets or the conduct of the Business shall be destroyed by any party for a period of six years after the Closing Date without giving the other party at least 30 days prior written notice, during which time such other party shall have the right (subject to the provisions hereof) to examine and to remove any such files, books and records prior to their destruction. The access to files, books and records contemplated by this Section 7.2 shall be during normal business hours and upon not less than two (2) Business Days prior written request, shall be subject to such reasonable limitations as the party having custody or control thereof may impose to preserve the confidentiality of information contained therein, and shall not extend to material subject to a claim of privilege unless expressly waived by the party entitled to claim the same.

7.3 Survival. {tc \l2 "7.3 Survival} All representations, warranties, covenants and agreements contained in this Agreement or the Transaction Documents shall survive (and not be affected in any respect by) the Closing, except that:

(a) the representations and warranties contained in Sections 3.12 and 3.16 shall terminate on, and no action or claim with respect thereto may be brought following the expiration of the applicable statute of limitations (or extensions or waivers thereof);

(b) the representations and warranties contained in Section 3.2 shall survive for an unlimited period of time;

(c) the representations and warranties contained in Section 3.8 shall terminate on, and no action or claim with respect thereto may be brought after, the seventh anniversary of the Closing Date;

(d) with respect to Pre-Closing Product Liabilities that are undisclosed in the Schedules, no action or claim with respect thereto may be brought after the fifth anniversary of the Closing Date;

(e) the representations and warranties contained in Section 4.2 shall survive for an unlimited period of time;

(f) all other covenants, representations and warranties contained in this Agreement shall terminate on and no further action or claim with respect thereto may be brought after, the third anniversary of the Closing Date; and

(g) such covenants, representations and warranties specified in the foregoing clauses (a) through (e) and the liability of any party with respect thereto, shall not terminate with respect

to any claim, whether or not fixed as to liability or liquidated as to amount, with respect to which such party has been given written notice setting forth the facts upon which the claim for indemnification is based and, if possible, a reasonable estimate of the amount of the claims prior to the relevant anniversary of the Closing Date or the 30th day after the expiration of the applicable statute of limitations (or extensions or waivers thereof), as the case may be.

7.4 Indemnification. {tc \12 "7.4 Indemnification} Seller, Parent, and Buyer agree as follows:

(a) General Indemnification Obligations.

(i) Subject to the limitations in Section 7.4 (c), Seller and Parent shall, indemnify Buyer, its Affiliates and agents and hold Buyer and such other parties harmless from and against any and all Damages arising out of or resulting from (A) any breach of any representation or warranty made by the Seller Parties in this Agreement; (B) any Pre-Closing On-Site Conditions and Pre-Closing Product Liabilities, except to the extent disclosed in the Financial Statements or on Schedule 2.3(iv) or Schedule 2.3(vi) hereto; (C) any breach of any covenant or agreement of the Seller Parties in this Agreement or in any document or certificate required to be furnished to Buyer by any of the Seller Parties pursuant to this Agreement (including the Transaction Documents); and (D) any Excluded Assets or Retained Liabilities.

(ii) Subject to the limitations in Section 7.4(c), Buyer shall indemnify each of the Seller Parties, and their respective directors, officers and other Affiliates and hold Seller and such other parties harmless from and against any and all Damages arising out of or resulting from (A) any breach of any representation or warranty made by the Buyer in this Agreement; (B) any breach of any covenant or agreement of Buyer in this Agreement or in any document or certificate required to be furnished to Seller by Buyer pursuant to this Agreement (including the Transaction Documents); (C) any Assumed Liabilities; and (D) the ownership or use of the Acquired Assets or the operation of the Business from and after the Closing.

(iii) For purposes of this Agreement, "Damages" shall mean any and all losses, liabilities, obligations, damages (including any governmental penalty or punitive damages assessed or asserted against the party seeking indemnification and including costs of investigation, clean-up and remediation), deficiencies, interest, costs and expenses and any claims, actions, demands, causes of action, judgments, costs and reasonable expenses (including reasonable attorneys' fees and all other reasonable expenses incurred in investigating, preparing or defending any litigation or proceeding, commenced or threatened, incident to the successful enforcement of this Agreement). For purposes of determining any breach of, and calculating the amount of Damages incurred by the Indemnified Party arising out of or resulting from, any breach of a representation, covenant or agreement by any party hereto, the references to a "Material Adverse Effect" or materiality (or other correlative terms) shall be disregarded. Notwithstanding the foregoing, Damages shall not include the loss of profits of the party seeking indemnification, or punitive damages unless the party seeking indemnification has had punitive damages assessed or asserted against it.

(b) General Indemnification Procedures.

(i) A party seeking indemnification pursuant to this Section 7.4 (an "Indemnified Party") shall give prompt written notice to the party from whom such indemnification is sought (the "Indemnifying Party") of the assertion of any claim, the incurrence of any Damages, or the commencement of any action, suit or proceeding, of which it has knowledge and in respect of which indemnity may be sought hereunder. The Indemnified Party will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request; but failure to give such required notice shall relieve the Indemnifying Party of any liability hereunder only to the extent that the Indemnifying Party has suffered actual prejudice thereby. The Indemnifying Party shall have the right, exercisable by written notice to the Indemnified Party after receipt of notice from the Indemnified Party of the commencement of or assertion of any claim or action, suit or proceeding by a third party in respect of which indemnity may be sought hereunder (a "Third Party Claim"), to assume the defense of such Third Party Claim which involves (and continues to involve) solely monetary damages; provided, that (A) the Indemnifying Party expressly agrees in such notice that, as between the Indemnifying Party and the Indemnified Party, solely the Indemnifying Party shall be obligated to satisfy and discharge the Third Party Claim, and (B) the Indemnifying Party makes reasonably adequate provision to assure the Indemnified Party of the ability of the Indemnifying Party to satisfy the full amount of any adverse monetary judgment that is reasonably likely to result. The Indemnifying Party shall be deemed to have satisfied the condition set forth in clause (B) of the proceeding sentence if it is a regulated utility or a registered public utility holding company.

(ii) Neither the Indemnified Party nor the Indemnifying Party shall settle any Third Party Claim without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

(iii) Subject to Section 7.4(b)(i), the Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim which the other party is defending as provided in this Agreement.

(iv) Amounts paid in respect of indemnification obligations of the parties shall be treated as an adjustment to the Purchase Price.

(v) Unless inconsistent with the terms of any relevant title insurance policy, Buyer agrees that (i) if it believes it is entitled to receive payment from Seller or Parent for Damages arising under or pursuant to a breach of the representation and warranty set forth in Section 3.10, and (ii) if Buyer has obtained title insurance which may cover the claim or matter giving rise to such Damages, then (iii) Buyer will first make and prosecute a claim under the title insurance if such claim can be made in good faith before proceeding against Seller and/or Buyer. Buyer shall be under no obligation to obtain title insurance.

(vi) If at any time subsequent to the receipt by an Indemnified Party of an indemnity payment hereunder, such Indemnified Party (or any Affiliate thereof) receives any recovery, settlement or other similar payment with respect to the Damages for which it received

such indemnity payment (including insurance proceeds pursuant to Section 7.4(c)(v)(A) and a tax benefit pursuant to Section 7.4(c)(v)(B)) (the "Recovery"), such Indemnified Party shall promptly pay to the Indemnifying Party an amount equal to the amount of such Recovery, less any expense incurred by such Indemnified Party (or its Affiliates) in connection with such Recovery, but in no event shall any such payment exceed the amount of such indemnity payment.

(vii) In the event of any indemnification claim under this Section 7.4 involving the claim of any third party, the Indemnified Party shall cooperate fully (and shall cause its Affiliates to cooperate fully) with the Indemnifying Party in the defense of any such claim under this Section 7.4. Without limiting the generality of the foregoing, the Indemnified Party shall furnish the Indemnifying Party with such documentary or other evidence as is then in its or any of its Affiliates' possession as may reasonably be requested by the Indemnifying Party for the purpose of defending against any such claim. Whether or not the Indemnifying Party chooses to defend or prosecute any claim involving a third party, all the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

(viii) With respect to a claim for indemnification asserted by Buyer under this Agreement on or before the first anniversary of the Closing Date, the Damages giving rise to such claim shall be presumed to relate to the period prior to the Closing Date unless Parent and Seller can demonstrate to the contrary, and with respect to any such claim asserted after the first anniversary of the Closing Date, the Damages giving rise to such claim shall be presumed to relate to the period after the Closing Date unless Buyer can demonstrate to the contrary.

(c) Limitations on Indemnification Obligations.

(i) No claim for indemnification shall be brought (A) pursuant to Section 7.4(a)(i)(A) after the expiration of the representation and warranty on which such claim is based, (B) pursuant to Section 7.4(a)(i)(B) after the seventh anniversary of the Closing Date with respect to Pre-Closing On-Site Conditions or (C) pursuant to Section 7.4(a)(i)(B) after the fifth anniversary of the Closing Date with respect to Pre-Closing Product Liabilities.

(ii) Neither Buyer nor the other Persons for which it can claim indemnity hereunder shall be entitled to indemnification pursuant to Section 7.4(a)(i)(A) or (B) unless the aggregate amount of Damages incurred by Buyer and such other Persons exceeds Seven Hundred and Fifty Thousand Dollars (\$750,000) in the aggregate (the "Threshold Amount"), in which case Seller and Parent shall then be liable for Damages in excess of the Threshold Amount.

(iii) The cumulative aggregate indemnity obligation of Parent and Seller under Section 7.4(a)(i)(A) and (B) shall not exceed Thirty-five Million Dollars (\$35,000,000) (the "Ceiling").

(iv) Neither the Threshold nor the Ceiling shall apply to Parent's and Seller's obligations to indemnify pursuant to Section 7.4(a)(i)(C) and (D).

(v) No party shall have any liability to another party under this Section 7.4 for Damages to the extent that (A) the Indemnified Party recovers insurance proceeds covering the Damages; or (B) the Indemnified Party incurs a net reduction in its Tax liability as a result of a tax benefit to which the Indemnified Party becomes entitled in respect of the Damages.

(vi) Seller and Parent shall have no liability or obligation under Section 7.4(a)(i)(A) for any Damages resulting from the inaccuracy or breach of any representation or warranty if such inaccuracy or breach is disclosed by Seller or Parent pursuant to and in accordance with Sections 5.3 and 8.4 hereof or if Seller or Parent can demonstrate that Buyer was aware of such inaccuracy or breach prior to the Closing Date as a result of its due diligence investigation, disclosure on the Survey or otherwise.

(d) The rights and remedies of Parent, Seller and Buyer under this Section 7.4 are exclusive and in lieu of any and all other rights and remedies which Parent, Seller and Buyer may have under this Agreement or otherwise for monetary relief with respect to (x) the inaccuracy of any representation, warranty, certification or other statement made (or deemed made) by Parent, Seller, or Buyer in or pursuant to this Agreement or any of the Transaction Documents, (y) any breach or failure to perform any covenant or agreements set forth in this Agreement or any of the Transaction Documents or (z) any Pre-Closing On-Site Conditions or Pre-Closing Product Liabilities.

7.5 UCC Matters. {tc \l2 "7.5 UCC Matters} From and after the Closing Date, Seller will promptly refer all inquiries with respect to ownership of the Acquired Assets or the Business to Buyer. In addition, Seller will execute such documents and financing statements as Buyer may reasonably request from time to time to evidence transfer of the Acquired Assets to Buyer in accordance with this Agreement, including any necessary assignment of financing statements.

7.6 Collection of Receivables. {tc \l2 "7.6 Collection of Receivables} Seller agrees that it shall promptly (and in any event no later than five (5) Business Days following receipt) deliver all payments with respect to accounts receivable from customers of the Business received on and after the Closing Date (including negotiable instruments tendered in payment of accounts receivable assigned to Buyer hereunder which shall be duly endorsed by Seller to the order of Buyer) to Buyer. Seller hereby authorized Buyer, effective as of the Closing, to open any mail addressed to Seller or any of the Subsidiaries and received by Buyer at any location operated by the Business after the Closing Date. Seller shall cooperate with Buyer in coordinating the transfer of collection agents and customers of the Business who pay their bills through the Automated Clearinghouse (ACH) process to Buyer.

7.7 Payments in Lieu of Property Taxes. {tc \l2 "7.7 Payments in Lieu of Property Taxes} Even if Buyer or its assigns is exempt from the payment of property taxes, Buyer or its assigns will continue to make payments to the taxing authorities in lieu of property taxes at the

same rate that such property taxes have been paid in the most recent property taxing period before Closing.

7.8 Transition Services. {tc \12 "7.8 Transition Services} Buyer shall have the option to purchase certain transition services for a period up to six (6) months after the Closing Date at the Seller Parties' cost. Buyer and the Seller Parties hereby agree to negotiate in good faith for the purpose of entering into a mutually acceptable definitive agreement detailing the terms and conditions for such transition services. The parties agree that Seller Parties' cost will include the full amount of additional license fees, as an example, that are required exclusively for the provision of transition services to Buyer.

## ARTICLE 8

### MISCELLANEOUS{tc \12 "ARTICLE 8 MISCELLANEOUS}

8.1 Construction. {tc \12 "8.1 Construction} Buyer and the Seller Parties have participated jointly in the negotiation and drafting of this Agreement and the Transaction Documents. In the event any ambiguity or question of intent or interpretation arises, this Agreement and the Transaction Documents shall be construed as if drafted jointly by Buyer and the Seller Parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" in this Agreement shall mean including without limitation. Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other genders as the context requires. The terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits hereto) and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits and Schedules to this Agreement unless otherwise specified. The word "or" shall not be exclusive. Provisions of this Agreement shall apply, when appropriate, to successive events and transactions. Section references refer to this Agreement unless otherwise specified.

8.2 Notices. {tc \12 "8.2 Notices} Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted to be given to any party hereunder shall be in writing and shall be deemed given only if delivered to the party personally or sent to the party by telecopy, by registered or certified mail (return receipt requested) with postage and registration or certification fees thereon prepaid, or by any nationally recognized overnight courier addressed to the party at its address set forth below:

If to Buyer:

Consolidated City of Indianapolis, Marion County, Indiana  
c/o A. Scott Chinn, Esq., Corporation Counsel  
Suite 1601, City-County Building  
200 E. Washington Street



Indianapolis, Indiana 46204  
Fax: (317) 327-3968

City-County Council, Consolidated City of Indianapolis,  
Marion County, Indiana  
c/o Robert G. Elrod, Esq., Counsel  
Elrod & Mascher  
4000 East Southport Road, Suite 200  
Indianapolis, Indiana 46237  
Fax: (317) 327-4230

with a copy to:

Sommer & Barnard, PC  
111 Monument Circle  
Suite 4000, Bank One Tower  
Indianapolis, Indiana 46204  
Attention: James A. Strain, Esq.  
Fax: (317) 236-9802

If to Seller or Parent:

NiSource Inc.  
801 E. 86<sup>th</sup> Avenue  
Merrillville, Indiana 46410  
Attention: Stephen P. Adik, Vice Chairman  
Fax: (219) 647-6060

with a copy to:

Schiff Hardin & Waite  
6600 Sears Tower  
Chicago, Illinois 60606-6473  
Attention: Robert J. Minkus, Esq.  
Fax: (312) 258-5600

8.3 Successors and Assigns. {tc \l2 "8.3 Successors and Assigns} The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The parties understand and agree that Buyer may assign this Agreement to any political subdivision or municipal corporation of Buyer, but agree that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto, which consent shall not be unreasonably withheld.

8.4 Exhibits and Schedules. {tc \l2 "8.4 Exhibits and Schedules} All Exhibits and Disclosure Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Disclosure of any fact or item in any

Schedule referenced by a particular paragraph or Section in this Agreement shall, should the existence of the fact or item or its contents be clearly related to any other paragraph or section, be deemed also to be disclosed with respect to that other paragraph or section.

8.5 Governing Law. {tc \l2 "8.5 Governing Law} This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without giving effect to the conflicts of laws principles thereof.

8.6 Consent to Jurisdiction. {tc \l2 "8.6 Consent to Jurisdiction} Each of Seller, Parent and Buyer irrevocably submits to the exclusive jurisdiction of (a) the Circuit or Superior Court situated in Marion County in the State of Indiana, and (b) the United States District Court for the Southern District of Indiana, for purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby (and agrees not to commence any action, suit or proceeding relating hereto except in such courts). Each of Seller, Parent and Buyer further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth in Section 8.2 shall be effective service of process for any action, suit or proceeding with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. Each of Seller, Parent and Buyer irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (a) the Circuit or Superior Court situated in Marion County in the State of Indiana, or (b) the United States District Court for the Southern District of Indiana, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

8.7 Severability. {tc \l2 "8.7 Severability} The parties agree that (a) the provisions of this Agreement shall be severable in the event that any provision hereof is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, (b) such invalid, void or otherwise unenforceable provision shall be automatically replaced by another provision which is as similar as possible in terms to such invalid, void or otherwise unenforceable provision but which is valid and enforceable and (c) the remaining provisions shall remain enforceable to the fullest extent permitted by law.

8.8 No Third Party Beneficiaries. {tc \l2 "8.8 No Third Party Beneficiaries} Nothing herein expressed or implied is intended or should be construed to confer upon or give to any Person other than the parties hereto and their successors and permitted assigns any rights or remedies under or by reason of this Agreement.

8.9 Entire Agreement. {tc \l2 "8.9 Entire Agreement} This Agreement, together with the Schedules and Exhibits hereto and the other Transaction Documents, the Confidentiality Agreement and the Settlement Agreement dated the date hereof between Buyer and Seller, constitute the entire understanding of the parties with respect to the subject matter hereof, supersede any prior agreements or understandings, written or oral, among the parties with respect to the subject matter hereof and is not intended to confer upon any Person other than the parties hereto any benefit, right or remedy.

8.10 Amendment and Waiver. {tc \l2 "8.10 Amendment and Waiver} The parties may, by mutual agreement, amend this Agreement in any respect, and any party, as to such party,

may (i) extend the time for the performance of any of the obligations of the other party; (ii) waive any inaccuracies in representations and warranties by the other party; (iii) waive compliance by the other party with any of the covenants or agreements contained herein and performance of any obligations by the other party; and (iv) waive the fulfillment of any condition that is precedent to the performance by such party of any of its obligations under this Agreement. To be effective, any such amendment or waiver must be in writing and be signed by the party providing such waiver or extension, as the case may be. The waiver by any party hereto of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach, whether or not similar.

8.11 Counterparts. {tc \l2 "8.11 Counterparts} This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

8.12 Headings. {tc \l2 "8.12 Headings} The headings preceding the text of the sections and subsections hereof are inserted solely for convenience of reference, and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

8.13 Definitions. {tc \l2 "8.13 Definitions} For purposes of this Agreement, "to the best of a relevant party's knowledge" shall mean the actual knowledge possessed by any of the following persons, after reasonable inquiry: (a) in the case of Parent, its Chairman, President and Chief Executive Officer, Vice Chairman, Executive Vice President and Chief Financial Officer, Executive Vice President and General Counsel, Executive Vice President and Chief Human Resources Officer, and Director, Financial Planning; (b) in the case of Seller, its directors, Chairman and Chief Executive Officer, President and Chief Operating Officer, Vice President and General Counsel, Senior Vice President, Governmental Relations, Real Estate and Public Affairs and Assistant Treasurer and Chief Accounting Officer; and (c) in the case of Buyer, Chairman of the Indianapolis Bond Bank and Chief of Staff of the Mayor's Office.

8.14 Construction of Certain Provisions. {tc \l2 "8.14 Construction of Certain Provisions} It is understood and agreed that neither the specification of any dollar amount in the representations and warranties contained in this Agreement nor the inclusion of any specific item in the Schedules or Exhibits is intended to imply that such amounts or higher or lower amounts, or the items so included or other items, are or are not material, and none of the parties shall use the fact of the setting of such amounts or the fact of any inclusion of any such item in the Schedules or Exhibits in any dispute or controversy between the parties as to whether any obligation, item or matter is or is not material for purposes hereof.

8.15 Bulk Sales. {tc \l2 "8.15 Bulk Sales} Buyer agrees that it shall not make any filings under the Indiana bulk sales provisions with respect to the transactions contemplated by this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the day and year first written above.

**BUYER**

**CONSOLIDATED CITY OF INDIANAPOLIS,  
MARION COUNTY, INDIANA**

By: \_\_\_\_\_  
Name: Bart Peterson  
Title: Mayor

By: \_\_\_\_\_  
Name: Dr. Beurt SerVaas  
Title: President, City-County Council

**SELLER**

**IWC RESOURCES  
CORPORATION**

By: \_\_\_\_\_  
Name: David A. Kelly  
Title: President

**PARENT**

**NISOURCE INC.**

By: \_\_\_\_\_  
Name:  
Title: